



U.S. Department of Justice

Environment and Natural Resources Division

EPA Region 5 Records Ctr.



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July 11, 2000

Via Overnight Mail

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Via Messenger

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Washington, D.C. 20005-3311

**Re: United States v. Elsa Morgan Skinner: Public Comments from
CLEAN**

Dear Messrs. O'Callahan and Bourdeau:

Enclosed herewith, please find the public comments submitted by the Citizens Lobby for Environmental Action Now, Inc. ("CLEAN"), which we received in today's mail.

Sincerely,

Drenaye L. Houston, Senior Attorney

enclosure

cc: (w/ enclosure)

Sherry Estes, Esq., U.S. EPA, Region 5
Craig Melodia, Esq., U.S. EPA, Region 5

Citizens Lobby for Environmental Action Now, Inc.
c/o Beth B. Hauer
9740 Farmcrest Drive
West Chester, Ohio 45389
July 6, 2000

Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Ladies and Gentlemen:

Enclosed please find comments by the Citizens Lobby for Environmental Action Now, Inc. (CLEAN) about the proposed Remedial Action Consent Decree, Skinner Landfill Superfund Site in West Chester, Ohio, United States v. Elsa Skinner-Morgan, et al, Civ. Action No. C-1-00-424, DF Ref. Nos. 90-11-3-1620, 90-11-6-118, 90-11-6-128.

CLEAN is a local citizens' group and non-profit corporation. Many members of CLEAN reside in West Chester. I reside at 9740 Farmcrest Drive, West Chester, Ohio.

CLEAN was formed and incorporated in 1990. CLEAN has been involved in several environmental issues, including the BFI Infectious Medical Waste Incinerator in West Chester; the Skinner Landfill Superfund Site in West Chester; Butler County drinking water & sewer issues; and others.

For approximately five years, CLEAN opposed Ohio EPA's permitting and the permitted operation of the BFI Infectious Medical Waste Incinerator in West Chester. That offending incinerator was permanently shut down and removed from the community.

CLEAN also opposed U.S. EPA's proposal of a hazardous waste incinerator as part of a remedy to "clean up" the Skinner Landfill Superfund Site in West Chester. CLEAN opposed that proposal because CLEAN did not believe that it was the safest and best remedy for the Skinner Site or the community. CLEAN met with U.S. EPA several times, organized public meetings, educated the community about the issues, lead the organization of the Skinner Landfill Community Coalition, etc. Eventually, EPA withdrew its objectionable incinerator proposal, and selected a safer and better remedy for the Skinner Site. That remedy, the selected remedy, is specified & justified in the Record of Decision for the Skinner Site. Our comments about the proposed Remedial Action Consent Decree and related matters are enclosed.

CLEAN also investigated, documented, publicly exposed and gained some environmental enforcement action against chronic drinking water & water pollution lawbreaking by the Butler County Board of Commissioners. That lawbreaking, and related alleged crimes, concerns Butler County's drinking water & sewer systems, development in the service areas of those systems, millions of dollars in connection fees and other monies, millions of dollars in Butler County water & sewer system revenue bonds, Butler County's bond rating, risks to the public health and welfare, staggering financial damage and other detriments to Butler County's water & sewer customers, and more.

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Unfortunately, the State of Ohio and the Justice Department refused to investigate the vast majority of the alleged crimes that CLEAN and/or I brought to their attention. To the best of our knowledge, there has been some (not enough) environmental law enforcement, but there has been no financial or criminal law enforcement to date. Tens of thousands of citizens have been denied the full protection of environmental, financial and criminal laws. Butler County water & sewer customers have suffered numerous increases in the rates they pay to Butler County for water & sewer services. Additional rate increases have been enacted and are scheduled to be implemented.

We certainly hope that the full protection of environmental laws will be provided to this community with respect to the Skinner Landfill Superfund Site, the cleanup of that site, etc.

Sincerely,



Beth B. Hauer

Citizens Lobby for Environmental Action Now, Inc.

Comments by the Citizens Lobby for Environmental Action Now, Inc.
(CLEAN) concerning Proposed Remedial Action Consent Decree,
Skinner Landfill Superfund Site, West Chester, Ohio.
United States v. Elsa Skinner-Morgan, et al.
Civ. Action No. C-1-90-424
DF Ref. Nos. 90-11-3-1620, 90-11-6-118, 90-11-6-128.

The proposed Remedial Action Consent Decree and Remedial Design for the cleanup of the Skinner Landfill Superfund Site (the Skinner Site, or the site) are not consistent with the remedy that was officially selected and justified by the United States Environmental Protection Agency (EPA) in the Record of Decision (ROD) for the Skinner Site. According to the Record of Decision¹, the "selected remedy" consists of the following:

- "A multi-layered RCRA cap will be constructed over the area covered by the former dump and the buried waste lagoon. ... The cap will consist of the following layers, starting at the bottom:
- "Immediately above the waste materials, a layer of permeable materials such as sand will be installed, if necessary, for the purpose of venting the gases which result from the decomposition of waste materials. It is possible that the existing cover materials will adequately perform this function, and that construction of a venting layer will not be necessary;
- "A twenty-four inch thick layer of clay will be installed, and constructed in a manner which will achieve a maximum permeability of 10⁻⁷ cm/sec;
- "A thirty mil thick flexible membrane will be installed over the clay layer;
- "A drainage layer will be installed over the membrane. This may be achieved using six inches of sand with a geotextile fabric base, or by using various commercially available synthetic products;
- "An intrusion barrier will overlie the drainage layer. This is intended to limit the possibility of intrusion into the waste materials by burrowing animals. This will typically be composed of six inches of cobbles and six inches of gravel;
- "A twenty inch thick layer of soil will be installed on top of the intrusion barrier;
- "Vegetation will be planted and maintained on the cap, in a manner so as to minimize the potential for erosion." (Underlining added.)

The Record of Decision further states:

- "In order to prevent damage to the clay layer through frost penetration, the cap shall be constructed to that the top of the clay layer is at least 30 inches below the top surface of the cap." (Underlining added.)

¹ Record of Decision, pages 28-32;
² Record of Decision, page 28.
³ Record of Decision, page 28.

- "Any contaminated materials outside of the area to be capped, such as the waste pit soils, will be dug up and moved to the area to be covered by the cap. The cap design will provide for the venting of gases from the waste materials." (Underlining added.)
- "The cap will be constructed so that the slope will not exceed 5% to the maximum extent practicable. However, this will not be possible in certain portions of the site, such as the eastern edge of the former dump, where there is a precipitous drop-off. In order to provide a structurally stable cap in these areas, it is anticipated that concrete retaining walls or similar structures will need to be constructed. It is possible that some waste materials will have to be moved in order to facilitate construction of the cap. The cap shall be designed in a manner which will minimize the amount of contaminated waste materials to be moved. Any such movement will be conducted in such a manner so as to minimize the release of contaminants to the environment." (Underlining added.)
- "Contaminated soils and waste materials from the buried pit area which exceed the concentrations listed in Table 2 shall be excavated and placed under the cap. Soils in the areas near wells GW-29 and GW-38 (see Figure 1) shall be evaluated for potential consolidation under the cap. In the course of the remediation, it is possible that other contaminated areas which lie outside of the capped area will be encountered. Any such additional materials may be consolidated under the cap." (Underlining added.) (Consolidation)
- "Contaminated groundwater downgradient of the area to be capped will be intercepted, captured and treated."

4 Record of Decision, page 29.
5 Record of Decision, page 29.
6 Record of Decision, page 29.
7 Record of Decision, page 29.

- "Interception of contaminated groundwater: Contaminated groundwater is present downgradient of the area to be capped." Contaminated groundwater shall be defined as that which contains contaminant concentrations exceeding the values listed in Table 1. This contaminated groundwater shall be intercepted and captured. Conceptually, this may be achieved by installing an underground barrier wall and collection trench downgradient of the waste materials. Common barrier wall construction techniques include slurry walls, vibrating beams, and grout curtains. This interception may also be achieved through the pumping of groundwater extraction wells. The system shall be designed to assure that no groundwater which contains contaminants exceeding the site-specific groundwater trigger levels given in Table 1 (attached) is allowed to pass into or underneath the East Fork of Mill Creek."⁹ (Underlining and footnote added.)
- "Treatment of contaminated groundwater: Contaminated groundwater from the site must be removed from the ground and treated prior to discharge. This may be achieved through the use of an on-site wastewater treatment plant. The discharge must meet ARARs (see Attachment A). Depending on the volumes of wastewater involved, it may be economical to transport the wastewater off-site for treatment in a permitted facility. In this case, the discharge will have to meet the limits of the facility's permit.

"In the course of the design, it may be determined by U.S. EPA that the capture of contaminated groundwater from areas of the site other than immediately downgradient of the area to be capped will be necessary."¹⁰

⁹ According to page 38 of the Record of Decision, "The most highly contaminated groundwater at the site was detected during Phase 1 of the Remedial Investigation upgradient of the lagoon. Incineration would not have addressed the source of these contaminants. ... Identical provisions for capping, groundwater control, collection and treatment, soil vapor extraction, and institutional controls would be required whether or not incineration was chosen. In the end, U.S. EPA judged that the long-term environmental gains which would have been associated with incineration were limited, and that the difficulties and costs associated with the implementation of incineration would be disproportionately high."

⁹ Record of Decision, page 29.

¹⁰ Record of Decision, page 30.

- "Upgradient groundwater control: Currently, groundwater flows into the site from upgradient and becomes contaminated as it flows through the site. Additionally, it appears that some contaminated waste materials are in contact with the groundwater, and are therefore causing contamination of the groundwater. Therefore, the flow of groundwater onto the site shall be controlled, as will the level of groundwater underneath the cap, so that contaminated materials are no longer in contact with the groundwater. One method to achieve this is by installing a barrier wall upgradient of the former dump and waste lagoon. There are several types of barrier walls, including slurry walls, vibrating beams, and grout curtains. It may be necessary to obtain an easement along the northern site boundary in order to install the cap and to implement the upgradient groundwater control. Installation of the cap may cause a sufficient depression of the water table beneath the cap, thereby fulfilling the function of the upgradient groundwater control."¹¹ (Underlining, italics and bold type added.)

Comment: The aquifer beneath the waste is fed by groundwater flow and precipitation. The cap is expected to deter precipitation that lands on top of the cap from percolating down through contaminated wastes and becoming contaminated; however, the cap will do nothing to prevent precipitation that lands elsewhere or groundwater flow from feeding the aquifer beneath the waste, making the level of groundwater beneath the cap rise.

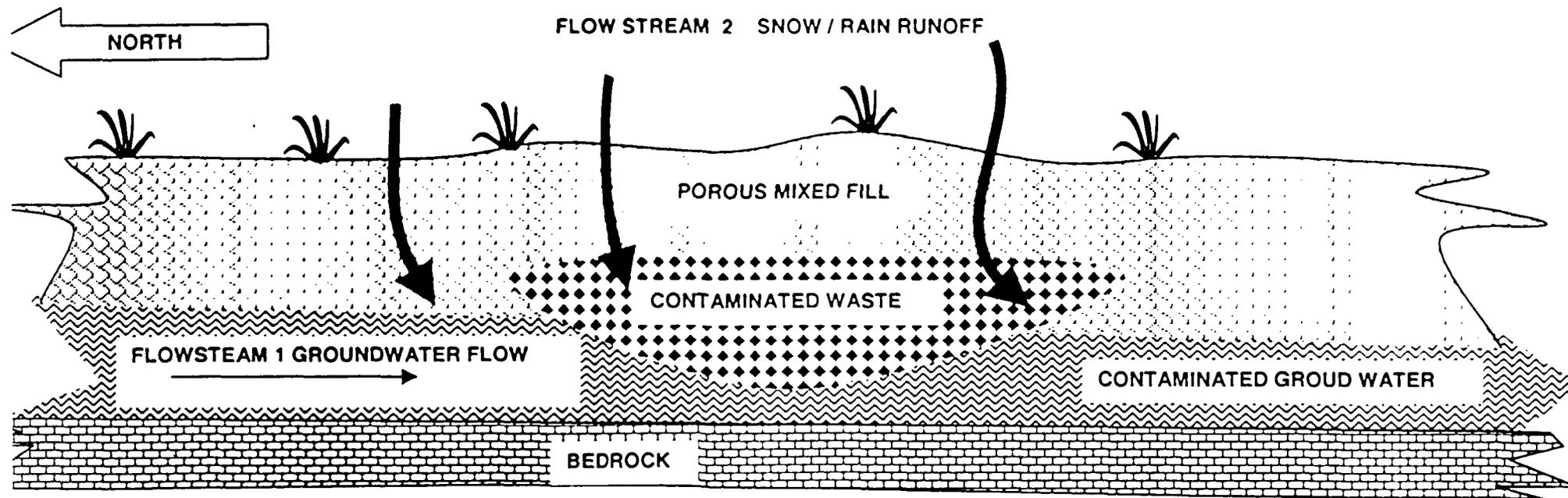
Even if the cap does cause a sufficient depression of the water table beneath the cap to depress the level of groundwater beneath the cap and prevent that groundwater from coming into contact with contaminated wastes and becoming contaminated, the cap will do nothing to prevent groundwater from flowing into the site from upgradient and becoming contaminated as it flows through the site and comes into contact with contaminated wastes. Thus, the cap will not fulfill both of the functions of the upgradient groundwater control.

The cap may or may not fulfill one of the two functions of the upgradient groundwater control, but it definitely will not fulfill both of the functions of the upgradient groundwater control. The ROD requires 1) that the flow of groundwater onto the site shall be controlled. The ROD also requires 2) that the level of groundwater underneath the cap shall be controlled. The purpose of these two requirements is to prevent groundwater from coming into contact with contaminated wastes and becoming contaminated.

Currently, groundwater flows into the site from upgradient and becomes contaminated as it flows through the site and comes into contact with contaminated wastes. Groundwater also becomes contaminated when the water level rises in the aquifer and groundwater comes into contact with contaminated wastes. Both avenues of contamination must be closed.

¹¹ Record of Decision, page 30.

SCHEMATIC OF EXISTING SITE



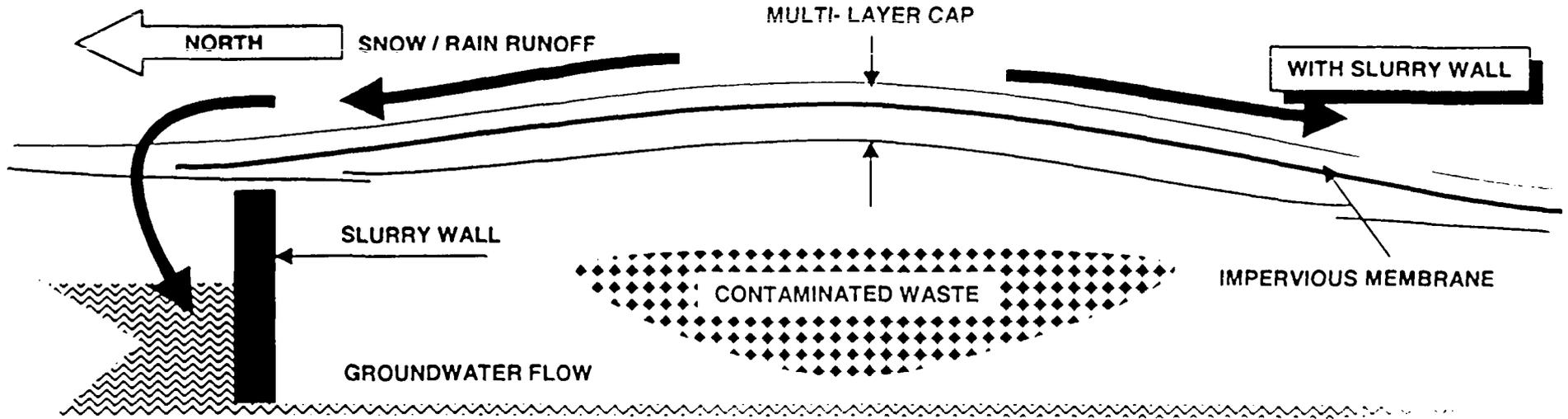
2 DISTINCT FLOW STEAMS ENTER THE CONTAMINATED WASTE:

- 1 UPGRAIDENT GROUNDWATER +
- 2 RAIN / SNOWMELT ABOVE WASTE

ACCORDING TO R.O.D ".....and therefore contaminate the groundwater."

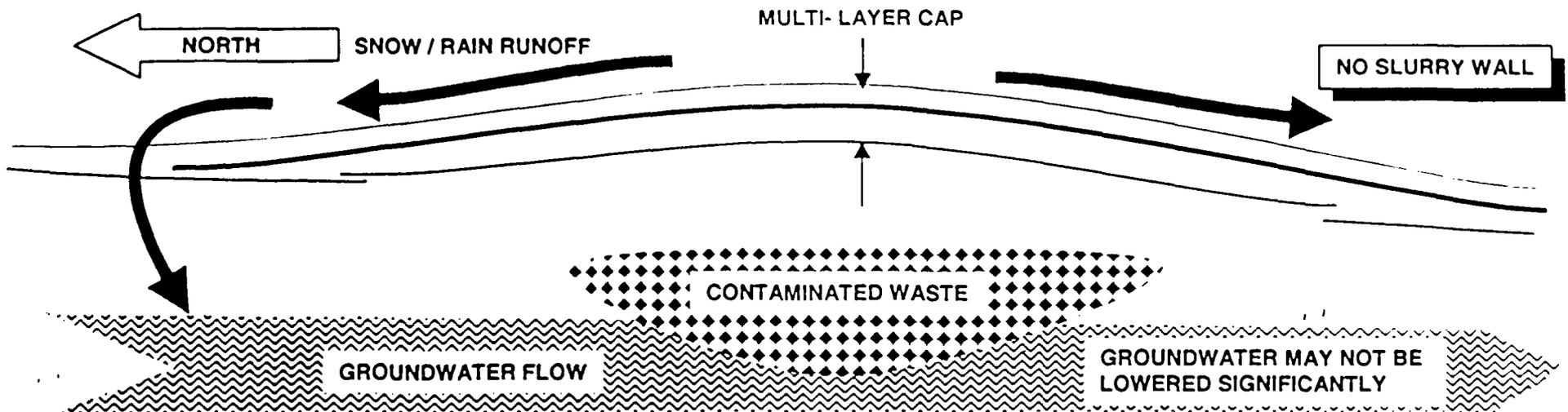
"...Therefore, the flow of ground water onto the site shall be controlled, as will the level of the groundwater underneath the cap so that contaminated materials are no longer in contact with the groundwater."

SKINNER LANDFILL ISSUES AND CONCERNS FROM C.L.E.A.N.



WITH SLURRY WALL - RUNOFF FROM NORTHERN GRADIENT OF CAP IS DIVERTED AROUND CONTAMINATED WASTE & GROUNDWATER WATER TABLE LOWERED - CAP EFFECTIVENESS ENHANCED. THIS IS CONSISTENT WITH R.O.D. REQUIREMENT ".....the flow of ground water onto the site shall be controlled "

Fig 2

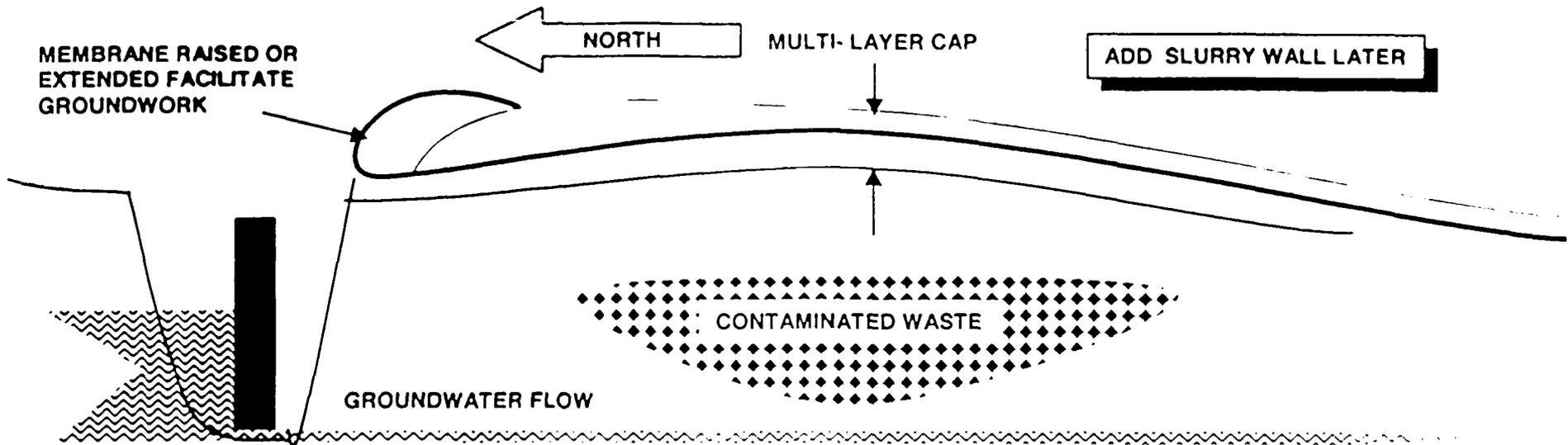


RUNOFF FROM NORTHERN GRADIENT OF CAP STILL ENTERS GROUNDWATER UPSTREAM OF WASTE - CAP EFFECTIVENESS REDUCED GROUNDWATER WILL CONTINUE TO BE CONTAMINATED.

THIS PROPOSAL DEPENDS ON MONITORING BY THE P.R.P'S FOR 2 YEARS ONLY + THEORETICAL PROJECTIONS OF WHAT MIGHT HAPPEN OVER THE NEXT 3 YEARS. THIS DOES NOT MEET R.O.D. REQUIREMENT ".....the flow of ground water onto the site shall be controlled "

Fig 3

SKINNER LANDFILL ISSUES AND CONCERNS FROM C.L.E.A.N.



INSTALLING THE CAP + WALL IS A SURE-FIRE WAY TO LOWER THE WATER LEVEL - CAP ALONE MAY NOT DO IT THIS SOLUTION DOES NOT DEPEND ON DOWNSTREAM PUMPS TO BE EFFECTIVE.

ADDING SLURRY WALL LATER WILL REQUIRE
MONITORING BY PRP'S TO CHECK GROUNDWATER LEVEL (2 YEARS)
ANALYSIS BY EPA -ESTIMATES FOR NEXT 3 YEARS
NEW DESIGN
NEW BIDS
NEW CONTRACTS
REVISITING SITE
PARTIAL REMOVAL AND POSSIBLE DAMAGE TO ALREADY- LAID CAP
PROLONGED RISK TO COMMUNITY

MAIN ISSUE: BOTH PRP'S & EPA HAVE A VESTED INTEREST IN FINDING NOTHING WRONG DURING MONITORING.

To leave a known avenue of contamination open is not consistent with the ROD, nor is it protective of the public health, safety and welfare, the environment or local property values.

It is unclear whether any private wells on or near the site are still being used to supply water for drinking, bathing, etc. An offer was made to connect local well users to the public drinking water system. However, there are municipal and private wells downgradient from the site that are still being used to supply water for drinking, bathing, etc.. Those well users must be protected. To say the least, it is grossly irresponsible of EPA to allow groundwater to continue to contact contaminated wastes on the site, become contaminated, possibly migrate off the site and threaten human health, the environment and local property values.

Selected Remedy, continued:

- "Soil Vapor Extraction (SVE) is a technology by which volatile organic vapors and are found in the pore spaces in the soil underground are extracted, and then treated before discharge to the atmosphere. The waste lagoon is underlain in some areas by a permeable sandy material, from which it appears possible to extract volatile organic vapors. If feasible, such extraction will help to control the potential for migration of contaminants away from the waste lagoon.

"As part of the design of this remedy, an investigation of the feasibility of conducting SVE in the area surrounding the buried waste lagoon will be performed. If U.S. EPA determines that this technology is implementable and effective based upon the results of this investigation, then it will be implemented."¹²

- "This remedy includes institutional controls to limit the future use of all areas of the site where remedial construction has occurred. These areas will include the area covered by the cap, any barrier walls, water treatment systems, extraction wells, etc. The restrictions must prevent the use of this portion of the site for any activity which will interfere with the performance of the remedy, or which will result in the exposure of contaminants to humans or the environment. Such activities include residential or recreational use, excavation, or construction of wells. U.S. EPA will seek to prevent all individuals from traversing the cap, once completed, so that the cap will not be damaged. The U.S. EPA will seek deed restrictions from the site owner as a means to impose these limitations on the use of the property.

"In the event that institutional controls cannot be implemented effectively, the U.S. EPA and Ohio EPA will consider additional actions as necessary to ensure that the remedy remains effective on a long-term basis."¹³ (Underlining added.)

¹² Record of Decision, page 30.

¹³ Record of Decision, pages 30-31.

- "Since a large volume of potentially mobile contaminants will be left on this site, routes by which contaminants will migrate through the ground must be monitored following construction of this remedy. This shall include monitoring of groundwater and surface waters, and monitoring for the potential migration of Dense, Non-Aqueous Phase Liquid (DNAPL) contamination from the site. DNAPLs are contaminants such as creosote which are denser than water and are not very soluble in water, and therefore tend to sink through the aquifer."

"The performance of this monitoring will require that additional monitoring wells and other types of monitoring devices be installed as part of the remedial action. The groundwater shall be monitored to assure that the site does not cause exceedances of the Site-Specific Groundwater Trigger Levels given in Table 1. These site-specific trigger levels are drawn from the Baseline Risk Assessment. In addition, radiologic testing of groundwater and surface water and of any excavated soils or subsurface samples shall be included in the monitoring program, as a precaution. The surface waters shall be monitored to assure that ARARs are not violated. If the Site-Specific Trigger Levels are exceeded in groundwater downgradient monitoring wells, U.S. EPA and Ohio EPA will consider whether additional remedial activities are necessary to address groundwater conditions.

"Extensive monitoring of all media will be required during the remedial design and remedial construction."¹⁴ (Underlining added.)

- "Further investigation of two areas of the site will be required as part of the pre-design investigation. The first is the northeast corner of the site, as shown in Figure 3. The northeast corner of the site is to be capped. Prior to capping, a limited investigation will be performed in order to identify the types of materials which are buried in this area. It is possible that the extent of the cap will be increased based upon the results of this investigation. The second portion to be investigated is the area of the site which lies along Skinner Creek. Low-level contamination has been detected in the Skinner's residential well, which is located near to Skinner Creek. Sampling must be performed in order to determine the sources of groundwater contamination within the Skinner Creek valley. It is possible that this investigation may lead to the consolidation of additional contaminated soil materials under the cap, and/or additional groundwater monitoring, pumping and treatment."¹⁵ (Underlining added.)

¹⁴ Record of Decision, page 31.

¹⁵ Record of Decision, pages 31-32.

In his Declaration for the Record of Decision, EPA Regional Administrator Valdus Adamkus summarized the selected remedy as including "construction of a RCRA cap over the waste materials; interception, collection and treatment of contaminated groundwater; diversion of upgradient groundwater flow; monitoring; institutional controls; and soil vapor extraction."³⁶

Mr. Adamkus then wrote:

"The selected remedy is protective of human health and the environment, complies with Federal and State requirements that are legally applicable or relevant and appropriate to the remedial action, and is cost-effective. This remedy utilized permanent solutions and alternative treatment (or resource recovery) technologies to the maximum extent practicable.

"Because this remedy will result in hazardous substances remaining on site above health-based levels, a review will be conducted within five years after the commencement of the remedial action to ensure that the remedy continues to provide adequate protection of human health and the environment."³⁷ (Bold type added.)

The cleanup that EPA is allowing the PRPs to provide is a cut-down version of the selected remedy. This cut-down cleanup is not the selected remedy that EPA specified, formally selected and justified in the Record of Decision (ROD). The cut-down cleanup was not accepted by the community, either. The community accepted the selected remedy, not the cut-down cleanup. The cut-down cleanup does not comply with requirements of the ROD, and is illegal. The cut-down cleanup will not adequately protect the public health, safety and welfare, the environment, or local property values, either. Compared to the selected remedy, the cut-down cleanup does not meet or does a poorer job of meeting several of the nine criteria that must be used to evaluate the cleanup remedy, including Overall protection of human health & the environment; compliance with applicable and relevant and appropriate requirements (ARARs); Long-term effectiveness and permanence; Reduction in toxicity, mobility or volume; and Community acceptance.

EPA is swindling this community out of the selected remedy and the protection that remedy would provide. EPA is also saving the PRPs millions of dollars by swindling this community out of the selected remedy and allowing the PRPs to provide the cut-down cleanup rather than the selected remedy.

³⁶ Exhibit 5, Declaration for the Record of Decision, by Valdus Adamkus, Regional Administrator U.S. EPA Region V, dated June 4, 1993.

³⁷ Exhibit 5, Declaration for the Record of Decision, by Valdus Adamkus, Regional Administrator U.S. EPA Region V, dated June 4, 1993.

EPA Justified Selected Remedy

(Alternative 3 with soil vapor extraction, with upgradient groundwater control, etc.)

According to the Record of Decision, the remedial alternatives that were developed during the Feasibility Study (FS) were evaluated by EPA using the following nine criteria:

1. Overall protection of human health & the environment;
2. Compliance with applicable and relevant and appropriate requirements (ARARs);
3. Long-term effectiveness and permanence;
4. Reduction in toxicity, mobility or volume;
5. Short-term effectiveness;
6. Implementability;
7. Cost;
8. State acceptance;
9. Community acceptance.³³

EPA chose & justified the selected remedy -- Alternative 3 with soil vapor extraction, with upgradient groundwater control, etc. -- based on those nine criteria. In the Record of Decision, EPA wrote:

"U.S. EPA feels that the selected remedy will achieve the best balance in serving the needs of the environment, the community and the future residents of West Chester."³⁴ (Bold type added.)

In the Record of Decision, EPA also wrote:

"The selected remedy provides for protection of human health and the environment by limiting the potential for migration of contaminants off of the site. This is achieved through capping, control of groundwater flow upgradient, soil vapor extraction, and collection and treatment of contaminated groundwater downgradient of the areas in which wastes were disposed."³⁵ (Bold type added.)

The cut-down cleanup that EPA is allowing the PRPs to provide does not include control of groundwater flow upgradient, nor does it include soil vapor extraction. **Thus, two of the three measures that were supposed to limit the potential for migration of contaminants off of the site have been cut from the cleanup!**

The cut-down cleanup will allow groundwater to continue to become contaminated. It will also allow chemical vapors to escape into the atmosphere untreated. **The cut-down cleanup does NOT adequately provide for protection of human health or the environment by limiting the potential for migration of contaminants off of the site.**

³³ Record of Decision, pages 21-38.

³⁴ Record of Decision, page 38.

³⁵ Record of Decision, page 32.

Cost

The projected costs of the selected remedy are shown below:¹⁶

Capital Costs: \$ 9,700,900
Annual O&M Costs: \$ 397,000
Net Present Value Cost: \$16,031,900

At a projected Net Present Value Cost of \$16,031,900, the selected remedy (Alternative 3 including soil vapor extraction, etc.) is significantly less expensive than the remedy that EPA initially proposed, which was Alternative 5 (incineration with soil vapor extraction, etc.). The projected Net Present Value Cost of Alternative 5 (incineration with soil vapor extraction, etc.) was \$29,000,000.

Alternative 5 consisted of excavation and on-site incineration of some buried waste lagoon soils; multi-layered capping of remaining waste materials; collection and treatment of contaminated groundwater; diversion of upgradient groundwater flow; soil vapor extraction; monitoring; and deed restrictions. The costs of Alternative 5 (incineration with soil vapor extraction, etc.) are shown below:¹⁷

Capital Costs: \$22,920,000
Annual O&M Costs: \$ 397,000
Net Present Value Cost: \$29,000,000

As you can see, on a Net Present Value basis, Alternative 5 was projected to cost more than \$12.9 million more than the selected remedy (Alternative 3 including soil vapor extraction).

\$29,000,000	-	\$16,031,900	=	\$12,968,100
(Net Present Value of Alternative 5)	(Minus)	(Net Present Value of Alternative 3)		(Difference)

The cut-down cleanup that EPA now proposes to allow the PRPs to provide is significantly less expensive than the selected remedy. This would not be an issue for us if we did not believe that the cut-down cleanup is inconsistent with requirements of the ROD, does not meet legal requirements, will not protect the public health, safety and welfare, the environment or local property values, etc.

Net Present Value of Alternative 5

(incineration with soil vapor extraction, etc.) \$29,000,000¹⁸

Net Present Value of the selected remedy

(Alternative 3 with soil vapor extraction, with upgradient groundwater control, etc.) \$16,031,900¹⁹

Total Estimated Cost of the cut-down cleanup \$ 9,100,000²⁰
(Net Present Value not found)

Based on the above figures, the cut-down cleanup will cost approximately \$6,931,900.00 less than the selected remedy.

¹⁶ Record of Decision, page 32.

¹⁷ Record of Decision, page 20.

¹⁸ Record of Decision, page 21.

¹⁹ Record of Decision, page 18.

²⁰ Remedial Design, Table 7.1.

The cut-down cleanup will cost approximately \$19,900,000.00 less than the remedy that EPA initially proposed (Alternative 5 -- incineration with soil vapor extraction, upgradient ground water control, etc.)

In regard to whether the selected remedy is cost-effective, EPA wrote in the Record of Decision:

"The U.S. EPA believes that the selected remedy is cost-effective in mitigating the risks posed by the site contaminants within a reasonable period of time. Section 300.430 (f)(ii)(D) of the NCP requires U.S. EPA to evaluate cost-effectiveness by comparing all of the alternatives which meet the threshold criterion; protection of human health and the environment, against three additional balancing criterion: long-term effectiveness and permanence; reduction of toxicity, mobility or volume, and short term effectiveness. The selected remedy provides the best overall balance of these criteria and provides for overall effectiveness in proportion to the cost. The incremental cost of incineration of the waste lagoon materials at this site is approximately \$13,000. Current information indicates that the overall site risks would not be enhanced by the incineration of the lagoon wastes to a degree which would justify this large added cost, particularly given that the lagoon wastes are only a portion of the contaminated materials at the site. The estimated cost of the selected remedy is:

Capital Costs:	\$ 9,700,900
Annual O&M Costs:	\$ 397,000
Net Present Value Cost:	\$16,031,900" ²¹

(Underlining added.)

Although EPA wrote in the Record of Decision that the selected remedy was "cost-effective in mitigating the risks posed by the site contaminants within a reasonable period of time," EPA turned around and cut from the cleanup two of the three measures that were intended to provide for protection of human health and the environment by limiting the potential for migration of contaminants off of the site: The upgradient groundwater control and soil vapor extraction. This is unreasonable, illegal and potentially dangerous to human health and the environment.

We want the selected remedy and the protection that the selected remedy would provide.

²¹ Record of Decision, page 35.

Utilization of Permanent Solutions and Alternate Treatment Technologies to the Maximum Extent Practicable

In the Record of Decision, EPA wrote:

"U.S. EPA believes that the selected remedy represents the maximum extent to which permanent solutions can be utilized in a cost-effective manner to address potential migration of contaminants away from the Skinner Landfill site. The selected remedy provides the best balance of tradeoffs in terms of long-term effectiveness or permanence; reduction in toxicity, mobility or volume; short-term effectiveness; implementability; cost; and State and community acceptance. The criterion of long-term effectiveness and permanence is addressed by the installation of a multi-layered cap, and groundwater collection trenches. Soil Vapor Extraction, if feasible, will provide for permanent removal of organic vapors.

"A detailed evaluation of the potential for application of alternate treatment technologies to the lagoon wastes was performed. The buried waste lagoon includes a wide variety of organic and inorganic waste materials, in a matrix that includes soils, garbage and demolition debris. It was determined that no currently practicable alternate treatment technologies are available to these materials; the only options for the buried waste lagoon materials are incineration and containment. Soil Vapor Extraction (SVE) is an alternate treatment technology, and is to be applied in the permeable materials which underlie part of the buried waste lagoon. This application of SVE is the maximum extent to which alternative treatment technologies can be practicably applied at this site."

EPA turned around and cut soil vapor extraction from the cleanup. Thus, no alternate treatment technology is expected to be used at the site. The Remedial Design does not include soil vapor extraction, nor does it include any air pollution control devices on the vents in the cap. Chemical vapors will continue to be allowed to escape untreated into the atmosphere -- into the air that people breathe at Union Elementary School, at the post office, in nearby homes and businesses, etc. This does nothing to protect human health or the environment.

It also does nothing to satisfy the requirement that the remedy must utilize permanent solutions and alternative treatment or resource recovery technologies to the maximum extent practicable.

²² Record of Decision, pages 35-36.

EPA wrote in the Record of Decision that, "None of the alternatives evaluated for this site would provide a totally permanent solution."²³ EPA also wrote that, "The selected remedy does not utilize resource recovery technologies."²⁴

EPA further wrote:

"Incineration would provide for permanent destruction of the organic components of the lagoon waste materials to the maximum extent practicable. However, incineration of the lagoon waste materials would only address a portion of the contaminated materials on the site. The most highly contaminated groundwater at the site was detected during Phase 1 of the Remedial Investigation upgradient of the lagoon. Incineration would not have addressed the source of these contaminants. Therefore, even if we were to incinerate the lagoon wastes, we would not be left with a "clean" site, by any means. Identical provisions for capping, groundwater control, collection, and treatment, soil vapor extraction, and institutional controls would be required whether or not incineration was chosen. Due to the large volume of contaminated materials which are present at this site, and the fact that the chemical contaminants are mixed with and buried under a wide variety of debris, the U.S. EPA believes that no truly permanent solutions are presently practicable for the majority of the waste materials at this site."

CLEAN did not believe that incineration was the safest and best remedy, so we strongly opposed that proposal.

CLEAN was reasonably satisfied with the selected remedy. CLEAN believes that the selected remedy is a safer and better remedy for the site than the remedy that EPA initially proposed (Alternative 5, incineration with soil vapor extraction, etc.). Obviously, CLEAN also believes that the selected remedy is a safer and better remedy than the cut-down cleanup that EPA is now proposing to allow the PRPs to provide. We hope that the Justice Department and the court will agree that the selected remedy is the safest and best remedy available and that legally, the selected remedy must be provided (rather than the cut-down cleanup that EPA is now proposing to allow the PRPs to provide).

We hope that neither the Justice Department nor the court has any intention of allowing EPA or the PRPs to get away with disregarding requirements of the Record of Decision and sticking this community with the cut-down cleanup. This community does not deserve to be swindled out of the selected remedy and the protection that remedy would provide. We hope that the Justice Department and the court will agree that this community deserves the selected remedy and the protection that remedy would provide, and that legally, the selected remedy must be provided.

²³ Record of Decision, page 36.

²⁴ Record of Decision, page 36.

²⁵ Record of Decision, page 36.

EPA trickery: Exclusive option granted to purchase the site;
EPA discouraged public comments on proposed Consent Decree and otherwise made a mockery of
the public comment process and the public interest in the site.

Frankly, we are appalled by the tricks that EPA has pulled over the last several years (a) in efforts to ram its proposed incinerator down the throats of the people of this community; (b) to placate outraged citizens and gain community acceptance of the selected remedy [which it now appears that EPA had no intention of requiring the PRPs to provide]; (c) to circumvent requirements of the Record of Decision and other legal requirements; or (d) to gain court approval of the proposed Consent Decree, stick this community with the cut-down cleanup [which is not the selected remedy and will not adequately protect the public health, safety and welfare, the environment, or local property values], and gain valuable benefits for EPA, the PRPs and/or a business entity (OXY) to which the proposed Consent Decree would grant an exclusive option to purchase the 67-acre Skinner Site.

The Skinner Site is one of the largest and most valuable properties in the heart of a nice business/residential area on Cincinnati-Dayton Road in West Chester. The location of the site is convenient to two interchanges with U.S. Interstate Highway 75 (one at Cincinnati-Dayton Road in West Chester, and one at Union Centre Boulevard in West Chester). Some people might think that the "cleaned up" Skinner Site would make a dandy spot for a multi-million dollar shopping center, office buildings or some other commercial development. Local residents & small business owners might disagree.

Unfortunately, EPA and Ohio EPA have a history of disregarding environmental laws in favor of development and other special interests, to the detriments of public interests and the people of this and other communities in Ohio. Now, with the purchase and potential development of the Skinner Site and large amounts of money at stake -- as well as the public health, safety and welfare, the environment and local property values -- EPA (and possibly Ohio EPA as well) is disregarding requirements of the Record of Decision and is proposing to allow the PRPs to provide the cut-down cleanup rather than the selected remedy. This stinks.

It appears that special interests concerning development and money are being given higher priority than the public health, safety and welfare, than the environment, or the value of local properties other than the Skinner Site.

CLEAN would not know about the exclusive purchase option in the proposed Consent Decree if we had not reviewed the proposed Consent Decree. EPA did not mention the purchase option to us, though we had numerous meetings with EPA about the Skinner Site and four of those meetings occurred after February 1, 2000. Apparently, the public would not know about the exclusive purchase option, either, if CLEAN had not discovered it and taken steps to bring it to public attention.

We would certainly like to know how the proposed Optionee, OXY, was "awarded" the exclusive option to purchase the Skinner Site. Were there other "applicants?" Is this a sweetheart deal? What criteria were used to decide who would be granted the exclusive option to purchase the site? Why is that deal in the proposed Consent Decree, when the proposed Consent Decree is between the United States and the listed PRPs?

Exclusive of the fact that the later EIA trickery, EPA discouraged public comments on proposed Consent Decrees and otherwise made a mockery of the public comment period and judicial review of the proposed Consent Decrees, etc., continued.

We have many other questions and concerns about this unsavory deal, especially in view of EPA's trickery, the cut-down cleanup, and EPA's unfair and possibly illegal decision to allow the PRPs to begin on-site work on the cut-down cleanup prior to the public comment period on the proposed Consent Decree and without court's approval of the proposed Consent Decree. That decision made a mockery of the public comment period and judicial review of the proposed Consent Decree.

CLEAN found it extremely difficult and time-consuming to obtain a copy of the proposed Consent Decrees.

- CLEAN's written request to the Justice Department for a copy of the proposed Consent Decrees was ignored. That did not surprise us very much. EPA and the Justice Department have a history of ignoring our complaints about alleged crimes by public officials & public servants. Why would the Justice Department bother to respond to our public records request, when they ignored our criminal complaints and have been refusing to provide the protection of law to us and thousands of other citizens for years??
- CLEAN and the *Pulse-Journal* were unsuccessful in their attempts to access the proposed Consent Decrees via the Internet. This was apparently due to a very dubious "computer error" by EPA that prevented Internet users from viewing the proposed Consent Orders on-line or downloading them.
- The proposed Consent Decrees were not available at U.S. EPA's repository at the Union/West Chester Township branch of the Middletown Public Library, either.
- The U.S. Attorney's office in Cincinnati, Ohio, refused CLEAN's requests to inspect and purchase a copy of the proposed Consent Decrees. The U.S. Attorney's office claimed that it did not have the proposed Consent Decrees, though EPA's public notice specifically stated, "The Consent Decrees may be examined at the Office of the United States Attorney, 220 United States Post Office & Courthouse, 100 E. 5th Street, Cincinnati, Ohio, 45202." The U.S. Attorney's office claimed that it "could not" produce or provide copies of the proposed Consent Decrees. The U.S. Attorney's office referred CLEAN to the federal Clerk of Court's office in Cincinnati, though the federal Clerk of Court's office was not listed in EPA's public notice as a source for the proposed Consent Decrees.
- The federal Clerk of Court's office in Cincinnati claimed that it did not have the proposed Consent Decrees, either, and referred CLEAN to a judge (a Judge Weber).

EPA trickery, obstruction, bad faith, etc., continues:

- The judge was out of town. His assistant claimed that she knew nothing about the proposed Consent Decrees, that she did not have them and that she could not produce or provide copies of them. She suggested that CLEAN contact one of the PRPs' attorneys in Dayton, Ohio, for a copy of the proposed Consent Decrees.

CLEAN complained that it is not the responsibility of opposing counsel to provide a copy of the proposed Consent Decrees to CLEAN. It is the responsibility of opposing counsel to protect the interests of his client, who is a PRP. It was the responsibility of the federal government to produce the proposed Consent Decrees for CLEAN's inspection and to provide a copy of the proposed Consent Decrees (public records) to CLEAN at CLEAN's expense. The federal government failed to do that though it was a simple matter of paperwork.

EPA, the Justice Department, et al, clearly should not have concealed the proposed Consent Decrees from CLEAN, from the press, or from any other citizens who may have attempted to exercise their rights to obtain a copy of those public records and to comment on the proposed Consent Decrees.

CLEAN complained about it to Union/West Chester Township Trustee Catherine Stoker. Fortunately, Union/West Chester Township had received a copy of the proposed Consent Decrees and promptly provided copies to CLEAN. Thus, CLEAN obtained a copy of the proposed Consent Decrees in the nick of time, but not from any of the federal sources that EPA listed in its written notice about the proposed Consent Decrees.

EPA, the Justice Department, and the Ohio Attorney General's office.

CLEAN spent most of the 30-day public comment period waiting in vain for the Justice Department to respond to CLEAN's request for a copy of the proposed Consent Decrees, and making unsuccessful attempts to get a copy of the proposed Consent Decrees from other sources that were listed in EPA's public notice or to which CLEAN was referred by the U.S. Attorney's office or the federal Clerk of Courts office.

By the time CLEAN received a copy of the proposed Consent Decrees from Union/West Chester Township, there were only a few days left prior to the expiration of the public comment period. Thus, CLEAN had little time to read and consider the approximately 2000 pages that comprise the proposed Consent Decrees and their attachments, and to research, formulate, write and submit its comments prior to the expiration of the public comment period.

CLEAN believes that EPA and the Justice Department (and possibly the U.S. Attorney's office and the federal Clerk of Courts office) deliberately obstructed CLEAN from obtaining a copy of the proposed Consent Decrees and fouled the public comment period. We fear that EPA, the PRPs and/or their agents will foul the complicated and dangerous cleanup of the Skinner Site as well. Their misdeeds may bring disaster to the people of West Chester, Sharonville or another downstream community. This is a very frightening situation.

It is perfectly clear that EPA and the Justice Department have been acting in bad faith. They cannot be trusted to abide by the law and respect citizens' statutory rights. They have already refused to do so. They cannot be trusted to protect the health, safety and welfare of thousands of people in our community, or our environment, with respect to the complicated and dangerous cleanup of the Skinner Landfill Superfund Site.

We strongly doubt that EPA or the Justice Department can be trusted to protect the public health, safety and welfare or the environment with respect to AK Steel or any other commercial or industrial source of pollutants. We received virtually no help from EPA or the Justice Department with respect to the offending BFI Infectious Medical Waste Incinerator in West Chester, or with respect to our complaints about extensive environmental lawbreaking and massive corruption by public officials & public servants of Butler County and the State of Ohio. Furthermore, until recently, EPA, the Justice Department, Ohio EPA and the Ohio Attorney General's office had apparently all been failing (or refusing) to protect the public health, safety and welfare and the environment with respect to AK Steel for about seven years (since about 1993), though AK Steel is one of the biggest polluters in Butler County and the State of Ohio! See Exhibit 3, "AK Steel accused of pollution violations," *Journal-News*, June 30, 2000.

EPA trickery, obstruction, bad faith, etc., continued:

EPA made a mockery of the public comment period on the proposed Consent Decrees. EPA also made a mockery of judicial review of the proposed Consent Decrees. EPA did so by allowing "Settling Generator Transporter Defendants" (PRPs) to begin on-site work on the cut-down cleanup prior to the public comment period on the proposed Consent Decree and without judicial approval of the proposed Consent-Decree.²⁶ We would not be surprised if EPA exceeded the limits of its legal authority.

Paragraph 12 (d) [Remedial Action] of the proposed Consent Decree states in part:

- "Settling Generator/Transporter Defendants have commenced at least one of the following field work activities prior to December 31, 1999 as described more fully in the Remedial Design: Item I, Project Initiation; Item II, Site Utilities; Item V, Monitoring Well Construction; and clearing and grubbing in areas where the cap will be placed, excluding the area where Waste Material was disposed... With the exception of Item V, Monitoring Well Construction, Settling Generator/Transporter Defendants shall complete the field work activities listed in the preceding sentence by March 31, 2000." (Underlining added.)
- The proposed Consent Decree was not lodged with the court until May 26, 2000. EPA did not notify the public about it until June 9, 2000. And then EPA and the Justice Department obstructed CLEAN from obtaining a copy of the proposed Consent Decree and fouled the public comment period.

EPA also discouraged CLEAN and other citizens from submitting comments on the proposed Consent Decree. Sherry Estes, Assistant Regional Counsel for EPA Region V, explained to CLEAN that the proposed Consent Decree amounted to a done deal that would not be changed regardless of objections that were raised by CLEAN or other citizens during or prior to the public comment period on the proposed Consent Decree. Ms. Estes called the public comment period, "a formality." Another agent of EPA, Susan Pastor, was quoted by a local newspaper as saying, "I really don't think the decree will change (after the public comment period)."²⁷

EPA does not seem to care what citizens think about the proposed Consent Decree. EPA seems to think that it can do whatever it likes, regardless of legal requirements, regardless of its responsibilities to protect the public health, safety and welfare as required by law, and regardless of concerns and complaints of the public -- whom EPA is supposed to be serving in accordance with the law. We find EPA's attitude and conduct extremely frightening and extremely arrogant. Furthermore, we do not believe that EPA has the legal authority to disregard requirements of the Record of Decision and allow the PRPs to proceed with the cut-down cleanup rather than the selected remedy.

²⁶ Proposed Consent Decree, paragraph 12 (d), Remedial Action.

²⁷ Exhibit 2, "Skinner comment period winding down," *Pulse-Journal*, July 5, 2000.

Regarding proposed Consent Decree, background, paragraph I. N:

The State of Ohio concurred with the selected remedy as specified in the Record of Decision (ROD), but the State did so with the following reservations:

- All contaminants will remain on-site, including the most toxic. A containment remedy, in place of long-term effectiveness and permanence as preferred by CERCLA, has been selected. Due to the nature of the topography, subsurface, and the groundwater, Ohio EPA has doubts as to the long-term effectiveness of Alternative 3.²⁸

Comment: Ohio EPA had concerns about the long-term effectiveness of the selected remedy when it included diversion of groundwater from upgradient, soil vapor extraction, etc. The cut-down cleanup that EPA now proposes to allow the PRPs to provide does not include diversion of groundwater from upgradient, nor does it include soil vapor extraction. Is Ohio EPA even more concerned now? CLEAN has grave concerns as to the long-term effectiveness of the cut-down cleanup. We do not believe that the cut-down cleanup will adequately protect the public health, safety and welfare, the environment, or local property values. Furthermore, we do not believe that EPA has the legal authority to disregard requirements of the Record of Decision and allow the PRPs to provide the cut-down cleanup rather than the selected remedy that was specified and justified by EPA in the Record of Decision.

Ohio EPA's reservations about the selected remedy, continued:

- EPA has decided to use community acceptance as the primary selection criterion for the remedy, out of the nine criteria required. This is not consistent with the National Contingency Plan (NCP).²⁹

Comment: EPA misled the community to believe that the selected remedy would be provided, and justified the selected remedy in the Record of Decision by using the criteria referenced above. The community accepted the selected remedy and EPA's justification of the selected remedy that is in the Record of Decision. Then EPA turned around and disregarded the selected remedy and the ROD. EPA is allowing the PRPs to provide the cut-down cleanup that is described in the Remedial Design. EPA is not requiring the PRPs to provide the selected remedy, even though the selected remedy is the one that EPA designated as the selected remedy & justified in the ROD; even though the community accepted the selected remedy (not the cut-down cleanup); and even though EPA does not have the legal authority to disregard requirements of the ROD and allow the PRPs to provide a cleanup that is inconsistent with requirements of the ROD. Essentially, EPA is swindling this community out of the selected remedy and the protection that remedy would provide.

²⁸ Exhibit 1, Memorandum dated May 28, 1993 from Kathy Lee Fox, DERR/SWDO, Ohio EPA, to Donald Schregardus, director, Ohio EPA.

²⁹ Exhibit 1, Memorandum dated May 28, 1993 from Kathy Lee Fox, DERR/SWDO, Ohio EPA, to Donald Schregardus, director, Ohio EPA.

Ohio EPA's reservations about the selected remedy, continued:

- EPA does not outline specifics for contingent aspects of the remedy, i.e., in-situ vapor extraction, movement of wastes, retaining wall and cap, long-term operation and maintenance (O&M). This is of special concern to Ohio EPA which could be left with the responsibility and cost of O&M if Skinner Landfill becomes a "fund-lead" site.
- OEPA has reservations as to whether deed restrictions can be successfully implemented at the site. This is due to the former, present, and future activities of the site owners who still reside at and conduct business at the site. Also, if the site becomes a "fund-lead" site, OEPA does not have authority to impose deed restrictions.³¹
- Despite OEPA's reservations, DERR and SWDO believe it will be in the State's best interest to concur with this ROD so that OEPA can continue its input to the remedial activities at the site.³²

In a letter dated June 1, 1993 from Director Schregardus of Ohio EPA to Valduis Adamkus, Regional Administrator of EPA Region V, Director Schregardus wrote, "Ohio EPA concurs with the selected remedy with reservations. Our reservations are explained below.

"The most toxic contaminants will remain on-site in the lagoon. The originally proposed remedy, which included incineration, would have destroyed these contaminants [NOT] and therefore, eliminated any potential for future off-site migration of these materials. The change in remedy relates to the issue of long-term effectiveness and permanence. It appears that in this case Community Acceptance, a modifying criteria in the remedy selection process, has been more heavily weighted than any other criteria."

Comment: EPA gained community acceptance of the selected remedy. EPA did not gain community acceptance of the cut-down cleanup. Apparently, EPA never intended to require the PRPs to provide the selected remedy. EPA is not requiring the PRPs to provide the selected remedy. Instead, EPA is allowing the PRPs to provide a cut-down cleanup which is inconsistent with requirements of the ROD, is illegal, will not adequately protect the public health, safety and welfare, the environment or local property values, and does not meet several of the criteria that must be used to evaluate the remedy.

³⁰ Exhibit 1, Memorandum dated May 28, 1993 from Kathy Lee Fox, DERR/SWDO, Ohio EPA, to Donald Schregardus, director, Ohio EPA.

³¹ Exhibit 1, Memorandum dated May 28, 1993 from Kathy Lee Fox, DERR/SWDO, Ohio EPA, to Donald Schregardus, director, Ohio EPA.

³² Exhibit 1, Memorandum dated May 28, 1993 from Kathy Lee Fox, DERR/SWDO, Ohio EPA, to Donald Schregardus, director, Ohio EPA.

Ohio EPA's reservations about the selected remedy, continued:

"The remedy relies heavily on institutional controls to limit future use of all areas of the site where remedial construction has occurred. Ohio EPA has some concern about the effectiveness of this part of the remedy given our ability to enforce such controls. Ohio recognizes that the ROD provides that if institutional controls cannot effectively be implemented a re-evaluation of the remedy will occur.

"Ohio EPA is concerned about the future operation and maintenance costs associated with the selected remedy. At this time it is anticipated that potentially responsible parties (PRPs) will participate in the design and implementation of the remedy. Because of this the agency is willing to concur, however, this situation is subject to change and could affect Ohio EPA's financial obligation at the site.

"While Ohio EPA believes that the original proposed alternative [Alternative 5 -- incineration with diversion of groundwater from upgradient, soil vapor extraction, a multi-layer cap, etc.] would have provided a more effective remedy for the long term, after giving consideration to community concerns, we concur with the selected remedy with the reservations that are explained above."

Director Schregardus' letter of June 1, 1993 to Administrator Adamkus is provided as Exhibit 4.

Proposed Consent Decree, continued

Regarding paragraph I. i (background) of the proposed Consent Decree, which states that EPA believes that the Work will be properly and promptly conducted by the Settling Generator/Transporter Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices:

The Remedial Design is grossly inconsistent with requirements the Record of Decision. The Remedial Design is required to be consistent with the requirements of the Record of Decision. If the Work is done in accordance with the Remedial Design, it will not be consistent with the Record of Decision, and it will not comply with requirements of the Consent Decree and its appendices which include the Record of Decision.

Regarding paragraph I.R (background) of the proposed Consent Decree, which states that the Parties also desire to facilitate the future reuse of the site, according to the Consent Decree's provisions:

CLEAN is concerned about the involvement of EPA and PRPs (parties to the proposed Consent Decree) in a potential real estate deal that is between the owners of the site and the optionee, OXY. Until we obtained a copy of the proposed Consent Decree, we had no knowledge of that proposed deal or the related provisions in the proposed Consent Decree. We are extremely concerned that EPA does not intend to require the PRPs to provide the selected remedy, and that the cut-down cleanup will provide valuable benefits to the listed PRPs, the owners of the site, OXY or another future purchaser of the site. OXY is poised to receive an exclusive option to purchase the site under the terms of the proposed Consent Decree. The site is one of the largest and most valuable properties in the residential/business neighborhood on Cincinnati-Dayton Road in the heart of West Chester. The site is conveniently located to two interchanges with U.S. Interstate Highway 75. Some people might think that the "cleaned up" Skinner Site would make a dandy spot for a multi-million dollar shopping center, office building, or other commercial development -- which could be very lucrative for the owners, OXY or another future purchaser of the site or a portion thereof. EPA is proposing to stick the community with a cut-down cleanup that is not consistent with the ROD, is allegedly illegal, and will not adequately protect the public health, safety and welfare, the environment, or local property values. This stinks.

CLEAN is very concerned about the exclusive purchase option to OXY and how those provisions came to be in the proposed Consent Decree. Until we reviewed the proposed Consent Decree, we had no knowledge of the provisions concerning the exclusive purchase option to OXY. To our knowledge, nothing has been reported in the newspapers about it. We do not know yet who or what is behind OXY. We do not know yet how or why OXY was "awarded" the exclusive purchase option. Were there other "applicants?" What criteria were used to decide who was "awarded" the exclusive option to purchase the site? We have many questions and concerns about this highly dubious deal, especially in view of the obstruction of our efforts to get a copy of the proposed Consent Decree with the provisions in it that concern the purchase option.

CLEAN requests that all provisions that concern the exclusive purchase option be removed from the proposed Consent Decree. They have nothing to do with how the site is cleaned up.

Proposed consent decree, continued

Regarding paragraph I. S, (background) of the proposed Consent Decree, page 5, which states that the Consent Decree has been negotiated in good faith, etc., and is fair, reasonable and in the public interest:

CLEAN strongly disagrees that the proposed Consent Decree was negotiated in good faith and that it is fair, reasonable and in the public interest. The proposed Consent Decree was negotiated in bad faith. It does not even come close to satisfying requirements of the Record of Decision and other legal requirements. It is not fair, reasonable or in the public interest. It is not about adequately protecting the public health, safety and welfare, the environment, or local property values. It is about saving the PRPs money, providing valuable benefits to them, and providing valuable benefits to the site owners, to OXY and EPA. It is also about swindling the public out of the selected remedy.

Regarding paragraph III.3 (pages 5-6), which states, in part, that the Settling Generators/Transporters (PRPs) shall be responsible for ensuring that their contractors & subcontractors perform the Work in accordance with the Consent Decree:

This is like putting the fox in charge of the chickenhouse. The Settling Generators/Transporter Defendants have a financial interest in cutting corners on the cleanup and saving money. They also have financial interests in not finding or reporting problems that they would or might be required to remedy (for example, that the downgradient groundwater collection system is not preventing contaminated groundwater from flowing into or under the East Fork Mill Creek). This is a flagrant conflict of interest. The public should not have to rely on the integrity of polluters who generated or transported hazardous or solid wastes to the site and created a major problem for the community -- a problem that will remain with us for the foreseeable future, whereas a large volume of contaminated wastes will remain on the site.

It is EPA's responsibility to ensure that the Work is performed in accordance with all applicable legal requirements, including the ROD; however, whereas we do not believe that EPA has any intention of ensuring that the Work is performed in accordance with all applicable legal requirements including the ROD, and whereas EPA personnel are ordinarily stationed in Chicago, Illinois, not West Chester, Ohio, we request that Union/West Chester Township be granted the authority to investigate whether the Work is being done in accordance with all applicable legal requirements including the ROD, whether the remedy is or is not successful in preventing contaminants from migrating off the site, etc. We are extremely nervous about the lack of local oversight of the cleanup and the monitoring of the site.

Regarding the definitions of "Parties" and "Optionee" on page 9:

We note that the definition of "parties" does not include OXY USA.

Under the definition of "Optionee," OXY USA is identified as the "Optionee," in its capacity as the holder of the option to purchase the site under Section XI of the proposed Consent Decree.

Proposed Consent Decree, continued

Regarding the definition of "Points of Compliance" on page 10:

Defines "Points of Compliance" for the downgradient groundwater control system as the line of monitoring wells between the interception system alignment and the East Fork of Mill Creek, as shown in Appendix B-1. We doubt that those wells will be sufficient to detect contaminated groundwater flowing into or under the East Fork of Mill Creek. They may not be sufficient to detect contaminated groundwater migrating off-site through fractures in the bedrock, sand or gravel seams, etc., either.

Regarding the definitions and remarks about the "Record of Decision" or "ROD" on page 10, and the "Remedial Design" on page 11:

The Record of Decision is attached as Appendix A to the proposed Consent Decree. The Remedial Design is attached as Appendix B to the proposed Consent Decree. There are many other appendices to the proposed Consent Decree.

Regarding the definition of "Site" on page 13:

"Site shall mean the Skinner Landfill Superfund Site, encompassing approximately 67 acres..." The capped area will encompass about ten acres. That will leave roughly 57 acres for the Optionee or other future purchaser of the site to build his/her shopping center, office building or whatever.

Regarding the Objectives of the Parties, Paragraph V.5, page 14:

States that the objectives of the Parties entering into the proposed Consent Decree are 1) to protect public health, welfare and the environment at the Site by implementation of the Remedial Design by the Settling Generator/Transporter Defendants; 2) to facilitate the future re-use of the Site; 3) to reimburse response costs of the Plaintiff and certain other Parties; and 4) to resolve claims of Plaintiff against Settling Defendants and the claims of the Settling Defendants which have been or could have been asserted against the United States with regard to this Site as provided in this Consent Decree.

The cut-down cleanup is inconsistent with the ROD and other legal requirements, is allegedly illegal and will not adequately protect the public health, safety and welfare, the environment or local property values. It appears that the Parties have no genuine intention of protecting the public health, safety and welfare, etc. It further appears that the Parties have no genuine intention of complying with requirements of the ROD and other legal requirements.

With the exception of the site owners, we fail to see why the Parties are so concerned about the future re-use of the site. The site has been a dump for many years. It will be interesting to see what the community thinks if much of the existing vegetation is removed from the site to make way for a shopping center, office building or other development on the site. It will also be interesting to see what the community thinks of that development if it generates additional traffic on Cincinnati-Dayton Road or other problems for the community.

Regarding paragraph V.6.a., page 15, Commitments by Settling Defendants and Federal Agencies:

States that Settling Generator/Transporter Defendants shall finance and perform the Work in accordance with the Consent Decree, the ROD, etc. The Settling Generator/Transporter Defendants clearly do not intend to finance and perform the Work in accordance with the ROD. The Remedial Design is inconsistent with the ROD. The Settling Generator/Transporter Defendants intend to finance and perform the cheaper, faster, cut-down cleanup that is described in the Remedial Design, not the selected remedy that was specified and justified by EPA in the ROD.

Regarding paragraph V.7, page 15, Compliance with Applicable Law:

This is absurd. EPA is putting the Settling Generator/Transporter Defendants in charge of the cleanup, in charge of monitoring their own work, in charge of their own legal compliance, and more. This does nothing to protect public interests. It invites abuses by the Settling Generator/Transporter Defendants, who generated or transported wastes to the site and created a major problem for the community.

Regarding paragraph VII.10., page 18, Selection of Supervising Contractor:

States that all aspects of the Work to be performed by Settling Generator/Transporter Defendants pursuant to Sections VII, VIII, IX and XVII of the proposed Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA... This essentially puts an agent of the Settling Generator/Transporter Defendants in charge of all aspects of the Work specified, including Performance of the Work, Remedy Review, Quality Assurance, Sampling and Data Analysis, and Emergency Response. This is absurd. It does nothing to protect public interests. It invites abuses.

Regarding paragraph VII.11., page 19, Remedial Design:

Within six months of lodging the Consent Decree, the Settling Generator/Transporter Defendants may propose modifications to the approved Remedial Design [which is inconsistent with the ROD already] to allow for re-use of the Site by a Prospective Purchaser. Any proposed modifications shall be submitted to EPA for review and approval... Any modifications approved by EPA shall be incorporated into, and made an enforceable part of this Consent Decree.

Good grief. This makes a mockery of the Community Acceptance Criteria and other criteria that were used to evaluate and justify the selected remedy. EPA evaluated, justified and selected the selected remedy in the ROD, and the community accepted the selected remedy in the ROD. However, EPA is not requiring the PRPs (the Settling Generator/Transporter Defendants) to provide the selected remedy. EPA is allowing them to provide the cut-down cleanup that is described in the Remedial Design. Worse, Paragraph VII.11 allows additional modifications to be made to Remedial Design, "to allow for re-use of the Site by a Prospective Purchaser."

Proposed Consent Decree, continued

The selected remedy and the ROD are clearly being disregarded by the Parties, and the Parties are essentially making a joke out of the CEPCIA criteria that were used to evaluate and justify the selected remedy in the ROD!

Regarding paragraph VII.12.a., page 20, Remedial Action:

States that the Remedial Action Work Plan was submitted, and that the plan provides for the construction and implementation of the remedy set forth in the ROD...

No it does not.

Regarding paragraphs VII.12.b. and c. pages 20-21, Remedial Action:

Establishes deadlines for modifications to documents submitted as part of the Remedial Design, and requires revisions, supplements, or other adjustments to a number of documents, including the Health and Safety Plan and the Remedial Design.

Oh great. The Health and Safety Plan, the Remedial Design, etc., are being revised again. It is virtually impossible for the public to figure out what will or will not be going on with this cleanup, due to the practices of ignoring requirements of the ROD, revising the Remedial Design and other documents that were previously approved, etc. This is a nightmare.

Regarding paragraph VII.12.d., page 21, Remedial Action:

States that, upon approval of the documents identified in subparagraphs b. and c. above, Settling Generator/Transporter Defendants shall, in compliance with the revised schedule for completion of the Remedial Action activities... implement the activities required under the Remedial Action Work Plan.

Those activities are not consistent with the ROD, and they will not adequately protect the public health, safety and welfare, etc.

Paragraph VII.12.d. goes on to require Settling Generator/Transporter Defendants to submit all plans, etc., required under the approved Remedial Action Work Plan... for EPA to review...

EPA is requiring the Settling Generator/Transporter Defendants to implement the activities required under the Remedial Action Work Plan, when EPA has not reviewed or approved that Plan.

Proposed Consent Decree, continued

Paragraph VII.12.d. goes on to state that Settling Generator/Transporter Defendants have commenced at least one of the following field work activities prior to December 31, 1999, as described more fully in the Remedial Design (Which version?): Item I, Project Initiation; Item II, Site Utilities; Item V, Monitoring Well Construction; and clearing and grubbing in areas where the cap will be placed, excluding the area where Waste Material was disposed...

EPA allowed the Settling Generator/Transporter Defendants to start on-site work on the cut-down cleanup, prior to the public comment period on the proposed Consent Decree and without to judicial review or approval of the proposed Consent Decree. EPA made a mockery of the public comment and judicial review and approval processes. We would not be surprised if EPA exceeded the limits of its legal authority as well.

EPA also required the Settling Generator/Transporter Defendants to complete the relevant field work activities by March 31, 2000. The proposed Consent Decree was not lodged with the court until May, 2000, and EPA did not notify the public about it until June, 2000.

And then EPA, the Justice Department, et al, obstructed CLEAN and other citizens from getting their hands on the proposed Consent Decree and discouraged the public from commenting on it. No wonder.

Regarding Paragraph VII.13.a, Performance Standards, Capping:

States that the cap shall meet the design requirements found in the Remedial Design (not the ROD) and the substantive requirements of RCRA Subtitle C. Also requires that the cap comply with ARARs, as set forth in the ROD or the Remedial Design, and the requirements of 40 CFR Section 264.310(a) (1993), including:

- 1) provide long-term minimization of migration of liquids through the Waste Material beneath the cap;
- 2) function with minimum maintenance;
- 3) promote drainage and minimize erosion or abrasion of the cap;
- 4) accommodate settling and subsidence so that the integrity of the cap is maintained; and
- 5) have a permeability less than or equal to the permeability of any natural subsoils present.

To some extent, this is inconsistent with the cap requirements in the ROD. What about the maximum 5% slope? What about the requirements concerning the layers of the cap? What about runoff from the cap on the upgradient side, which runoff may soak into the soil, flow under the cap along with the undiverted groundwater flow from upgradient, contact the waste and become contaminated? Even if the runoff from the cap does not do so, the undiverted groundwater flow from upgradient will. But does EPA care? No.

Proposed Consent Decree, continued

Another serious problem is that EPA is allowing a thinner cap with fewer layers, some thinner layers, and an experimental textile that has no long-term track record. This amounts to an experiment with the cap.

It is irresponsible to experiment with the cap at this site, considering the horrendous mixture of hazardous wastes that will be under it, the lack of soil vapor extraction, the lack of any air pollution control devices on the vents, the site's location in the heart of West Chester, across the street from an elementary school, near hundreds of homes & businesses and about 8000 people, etc. Chemical vapors will be allowed to escape into the atmosphere -- into the air that people breathe at the school, in homes in the vicinity of the site, etc.

Another serious problem is that the cap will have to be partly removed in the event that EPA deigns to require the installation of the upgradient groundwater control -- which is definitely required by the ROD, but which EPA is pretending is not required by the ROD and is not requiring the Settling Generator/Transporter Defendants to construct, though the upgradient groundwater control is one of the three measures that EPA used to justify the proposed remedy in the ROD and to explain how the selected remedy would provide for the protection of human health and the environment by limiting the potential for migration of contaminants off of the site. EPA also eliminated one of the other two measures, soil vapor extraction.

That leaves only one measure in the cut-down cleanup that provides for the protection of human health and the environment by limiting the potential for migration of contaminants off of the site: The downgradient groundwater control, which may or may not be successful in preventing contaminated groundwater from migrating off of the site.

Whereas the Settling Generator/Transporter Defendants are in charge of the monitoring, etc., it is unlikely that any migration of contaminants off-site will be "discovered" and accurately reported. If it is discovered and accurately reported, EPA will probably ignore it completely or cover it up for years while failing to take any enforcement action. Hey, it took EPA about seven years to get around to taking enforcement action against AK Steel. To our knowledge, EPA never did crack down on the offending BFI Infectious Medical Waste Incinerator in West Chester, or on the offending officials of Butler County & the State of Ohio -- though tens of thousands of citizens are continuing to suffer due to their chronic environmental lawbreaking and alleged crimes and the lack of enforcement against them!

If you want to gain community acceptance of a "selected remedy" for a Superfund Site, just lie through your teeth about what the remedy will include, and justify the selected remedy in accordance with CERCLA, ARARs and other applicable legal requirements. After the community accepts the "selected remedy" and basically gets off your back, throw the selected remedy out the window and do as you please. That's what EPA is doing here.

It is the responsibility of the Justice Department and the court to stop them. Please.

Proposed Consent Decree, continued

Regarding paragraph VII.13.b.1. and b.2.,, page 23, Downgradient Groundwater Control:

These paragraphs do not specify what will be done with the contaminated groundwater. Will it be sent to the POTW untreated? Will it be pretreated and sent to the POTW or another off-site facility for further treatment? Will it be treated on-site and discharged to the East Fork Mill Creek?

Regarding paragraphs VII.13.b.3 and b.4, page 24, Downgradient Groundwater Control, monitoring and problems:

Paragraph VII.13.b.3. puts the Settling Generator/Transporter Defendants in charge of monitoring the quality of the Site groundwater at the points of Compliance for the full range of parameters set forth in Appendix B-2, and monitoring the elevation and direction of flow of Site Groundwater. This is ridiculous. It does nothing to protect the public health, safety and welfare, the environment, or local property values. It invites abuses by the Settling Generator/Transporter Defendants. This community should not have to rely upon the integrity of generators or transporters of wastes who caused this community a serious problem that is going to remain with for the foreseeable future, whereas a large volume of contaminated wastes are going to remain on the site. If the Settling Generator/Transporter Defendants do not report unfavorable monitoring results, they will not have to submit plans for modifications or extensions to the groundwater interception system and they will not have to implement those plans -- at their expense or otherwise.

EPA does a very poor job of "detecting" violations and enforcing against them. EPA is already allowing the Settling Generator/Transporter Defendants to circumvent requirements of the ROD, provide the cut-down cleanup rather than the selected remedy, modify the Remedial Design to accommodate Prospective Purchasers of the site, etc. Therefore, we have absolutely no confidence in EPA's ability or willingness to detect or enforce against violations of legal requirements by the Settling Generator/Transporter Defendants concerning the Skinner Site, the groundwater, etc.

It gets worse. Paragraph VII.13.b.4., page 24, states that, after the two-year monitoring period specified in subparagraph 3 above, the Settling Generator/Transporter Defendants may request that EPA reduce the sampling frequency, parameters to be analyzed for, and/or the number of sampling locations to be samples, and/or modify the data quality objectives under which the sampling will be conducted.

That is ridiculous. Just because violations may not have occurred within two years does not mean that they will not occur, nor does it mean that it is any less imperative for violations to be promptly detected and remedied. Reducing requirements regarding the groundwater monitoring would not be protective of human health or the environment -- especially when we know that EPA cut the upgradient groundwater control from the cleanup, and that groundwater from upgradient will continue to flow through the site, contact contaminated wastes, become contaminated and present a risk of off-site migration of contaminants.

EPA's wishful thinking about the possibility that the cap will lower the water table beneath the cap enough to prevent groundwater from rising, contacting contaminated wastes and becoming contaminated, is another issue.

Regarding paragraph VII.13.c., page 24-28, Upgradient Groundwater Control:

It should have been investigated years ago whether contaminated wastes on the site are in contact with groundwater in the area that is to be capped. The cleanup should have been designed to address that problem if it exists, which it probably does.

EPA put the Settling Generator/Transporter Defendants in charge of monitoring groundwater elevations, direction of groundwater flow, and otherwise investigating whether "Waste Materials" underneath the cap are in contact with Site Groundwater, though the Settling Generator/Transporter Defendants have a major conflict of interests.

According to Paragraph VII.13.c.2, page 25, EPA -- in consultation with the Settling Generator/Transporter Defendants and the State -- will basically guess whether the elevation of the groundwater is below the Waste Material underneath the cap or is expected to fall below the Waste Material within three years of the completion of the two-year monitoring period specified in subparagraph 1 above.

If EPA determines that the elevation of the groundwater is below the Waste Material or is expected to fall below the Waste Material within three years of the completion of the two-year monitoring period specified in subparagraph 1 above, then EPA will deem it unnecessary for the Settling Generator/Transporter Defendants to construct the upgradient groundwater system -- regardless of the fact that the upgradient groundwater system is a mandatory requirement of the ROD; regardless of the fact that EPA justified the selected remedy including the upgradient groundwater control; regardless of the fact that the community accepted the selected remedy including the upgradient groundwater control; and regardless of what utter nonsense it is not to require the upgradient groundwater control to be constructed.

If EPA determines that Site Groundwater is in contact with the Waste Material underneath the cap and may "reasonably" be expected to remain in contact with the Waste Material for more than three years after the two-year monitoring period, Settling Generator/Transporter Defendants shall submit to EPA a plan and schedule to construct the upgradient groundwater control.

There is way too much room for argument as to whether EPA's guess is "reasonable" regarding whether the Site Groundwater may "reasonably" be expected to remain in contact with the Waste Material for more than three years, etc.

Proposed Consent Decree, continued

If, based on the data, EPA is unable to determine whether Site Groundwater is in contact with the Waste Material underneath the cap and may "reasonably" be expected to remain in contact with the Waste Material for more than three years after the two-year monitoring period, the Settling Generator/Transporter Defendants shall continue to monitor the elevation of the groundwater for another year, at which time EPA will make a final determination.

The integrity of the data is critical. It is absurd to put the Settling Generator/Transporter Defendants in charge of gathering much or all of the data on which EPA will base its determination. They have a conflict of interests.

If EPA's final determination is that the Site Groundwater is in contact with the Waste Material underneath the cap and may "reasonably" be expected to remain in contact with the Waste Material for more than two years after the completion of the additional one-year monitoring period referenced above, the Settling Generator/Transporter Defendants shall submit a plan for the upgradient groundwater control and a construction schedule.

However, the Settling Generator/Transporter Defendants may argue with EPA about the whole thing for years, while the public health, safety and welfare, the environment and local property values continue to be inadequately protected or endangered.

Regarding O&M Groundwater Monitoring, pages 27-28:

EPA put the Settling Generator/Transporter Defendants in charge of this monitoring as well, which will determine (or not determine) whether any off-site migration of Contaminated Site Groundwater is occurring. Again, this is absurd due to the conflict of interests.

Regarding paragraph XI.36., Grant of Option to Acquire Site to Optionee:

States that the Settling Generator/Transporter Defendants will pay \$5,000 (the Option Consideration) to the Settling Owner/Operator Defendants, who will grant to the Optionee (OXY USA) the exclusive right at its option to purchase the Site or any part thereof, together with all improvements thereon, all rights, easements, etc. Optionee may assign the Option as to all or part of the Site. Optionee may also seek purchasers for the Site, or any part thereof, upon terms deemed by Optionee to be advantageous.

It appears that the Optionee is poised to receive a valuable option to buy the Site, which is one of the largest and most valuable properties in the residential/business area in the heart of West Chester, near two interchanges with I-75, etc. Some people might think that the "cleaned up" Site would make a dandy spot for a multi-million dollar shopping center, office building, or other development.

The provisions concerning the exclusive option to purchase the Site, the Optionee, etc., are astonishing and very suspicious -- especially in view of EPA's failure to mention them to us, the incredible difficulty we had obtaining a copy of the proposed Consent Decree, and EPA's efforts to discourage citizens from commenting on the proposed Consent Decree.

Who or what is behind the Optionee, OXY USA, and why are the Settling Generator/Transporter Defendants buying OXY USA the option to purchase the Site? Why isn't OXY USA paying for its own option to purchase the Site? What did OXY USA do to get "awarded" the exclusive option to purchase the Site? Were there any other "applicants?" What criteria were used to select OXY USA as the Optionee?

Thanks to the proposed Consent Decree, OXY USA and other persons are in a position to benefit financially due to the cut-down cleanup of the Skinner Site, the exclusive option to purchase the site, etc. This is outrageous. The community is being swindled out of the selected remedy and will not be adequately protected by the cut-down cleanup!

According to the proposed Consent Decree, the purchase price (Option Price) for the entire Site, shall be \$50,000 or more. The balance of Net Sale Proceeds after payment of the Option Price shall be paid by the Party receiving these proceeds to the Skinner Landfill Special Account within the Hazardous Substance Superfund. What will the monies in that account be used for, and who controls them?

CLEAN has many questions and concerns about this. It stinks to high heaven. We request that the provisions concerning the Option to purchase the site, the designation of OXY USA as the Optionee, etc., be REMOVED from the proposed Consent Decree.

The issues concerning the option to purchase the site should have been discussed at a public meeting in West Chester well before the provisions concerning the option to purchase the site, the Optionee, etc., were included in the proposed Consent Decree. If there is nothing wrong with that deal, then why wasn't it discussed in public here? EPA personnel -- including Assistant Regional Counsel Sherry Estes, technical personnel and public relations personnel -- came to West Chester to meet with CLEAN. None of them mentioned the option to purchase the site. We are appalled that EPA did not bother to mention that smelly scheme to us and did not bother to bring it to the attention of the people of Union/West Chester Township.

Obviously, the Settling Generator/Transporter Defendants, EPA and other persons have been keeping the public in the dark about issues that pertain to the Skinner Site. Furthermore, the selected remedy has been replaced by the cut-down cleanup, the ROD is being disregarded, etc. This does not inspire our confidence that any of the applicable requirements will be met, nor does it inspire our confidence that EPA, the PRPs, et al, will disclose material facts about the Skinner Site, the option to purchase the site, migration of contaminants off-site, and other matters that the public has a right to know about. This is frightening.

Proposed Consent Decree, continued

Union/West Chester Township officials discovered glaring deficiencies in the emergency plans (e.g., the Contingency Plan) and insisted on numerous revisions.

Unfortunately, we have no confidence that the Contingency Plan will be followed in the event of an explosion, fire, chemical release or other emergency at the Skinner Site. The ROD is not being followed, the selected remedy is not being provided, and the public health, safety and welfare, the environment, and local property values are not being adequately protected. Why would the Contingency Plan be followed?

We strongly request that West Chester Township (formerly known as Union Township) be granted the authority to monitor the Skinner Site and the cleanup of the Skinner Site, to collect samples (which could be split with the PRPs and/or EPA, if desired), and otherwise investigate whether applicable legal requirements are being met, whether migration of contaminants has occurred or is occurring, or whether there is any imminent risk to the public health, safety and welfare with respect to the Skinner Site. We believe that local oversight of the Site during and after the cleanup is needed to protect the public health, safety and welfare, the environment and local property values. West Chester Township officials and the people of West Chester need to know what is going on at the Site. The PRPs should be required to pay West Chester Township's costs to monitor the Site.

Beth B. Hawer



State of Ohio Environmental Protection Agency

Southwest District Office

40 South Main Street
Dayton, Ohio 45402-2006
(513) 285-6367
FAX (513) 285-8404George V. Voinovich
Governor

Exhibit I

MEMORANDUM

TO: DONALD R. SCHREGARDUS, DIRECTOR

FROM: KATHY LEE FOX, ^{RL}DERR/SWDO AND CATHERINE ^{CS}STROUP, LEGAL

SUBJECT: RECORD OF DECISION, SKINNER LANDFILL

DATE: MAY 28, 1993

- CONFIDENTIAL, ATTORNEY-CLIENT COMMUNICATION -

SYNOPSIS

Attached you will find a letter for your signature which indicates Ohio EPA's concurrence with reservations with the selected remedy for the Skinner Landfill site located in Butler County. The selection process for the remedy is explained in detail in the Record of Decision (ROD) which is also attached. Skinner Landfill was placed on the National Priority List (NPL) in 1982.

BACKGROUND

The Skinner Landfill site was used for the disposal of a wide variety of wastes from 1934 to 1990, including demolition debris, household refuse, and a variety of chemical wastes. The Ohio EPA responded to a fire at the site in 1976, where the existence of a lagoon containing oily, black liquid was noted. Subsequent inspections noted numerous drums containing industrial and chemical wastes, and the report of military ordnance buried at the site. Ordnance claims were disproven by the U.S. Army; however, lagoon waste analyses found pesticides, heavy metals, and volatile organic compounds. A court order in early 1990 stopped all disposal activities by the site owners unless granted permission by the Ohio EPA and the Butler County Board of Health.

US EPA initiated a Phase I Remedial Investigation (RI) in 1984, and a Phase II RI and Feasibility Study (FS) in 1989. Contamination of ground water was discovered within and downgradient of both the lagoon and general waste area, plus seepage of semivolatile compounds into the East Fork of Mill Creek. A Baseline Risk Assessment examined current and future risks at the site, and the FS identified and compared five potential remedial action alternatives for the site. The selected remedial action was "Alternative 5" which included: incineration of lagoon wastes; multi-layered capping; control of ground water using slurry walls

D. Schregardus, - Confidential -
May 28, 1993
Page 2

and collection trenches; collection and treatment of contaminated ground water; and, soil vapor extraction.

The US EPA conducted two public meetings, held May 20 and July 29, 1992, to discuss the remedial alternatives. Due to extreme public opposition to incineration, including concerns by local government officials, (due to the close proximity of residences, an elementary school, and businesses) the US EPA decided to divide the site cleanup into two components (Operable Units 1 and 2) and to alter its decision making approach. Operable Unit 1 for fencing and alternate potable water supply was finalized in a ROD signed on September 30, 1992, and is presently underway. Operable Unit 2, the remainder of the remedy, has been altered to "Alternative 3" which consists of:

- consolidation and multi-layered capping of waste materials
- collection and treatment of contaminated groundwater
- diversion of up-gradient groundwater flow
- deed restrictions
- soil vapor extraction.

✓ This alternative has also been suggested and endorsed by the "Skinner Coalition," a local group of businesses, government, school board, and residents of Union Township, which was formed in response to a local activist group's (CLEAN) efforts to disrupt US EPA's public meetings and community relations process.

CONCLUSIONS AND RECOMMENDATIONS

The Division of Emergency and Remedial Response (DERR) and Southwest District Office (SWDO) have reviewed, commented upon, and assisted in writing the attached ROD. Both DERR and SWDO recommend that you concur, with reservations, to the selected Alternative 3. These reservations are based upon the following concerns:

- All contaminants will remain on-site, including the most toxic. A containment remedy, in place of long-term effectiveness and permanence as preferred by CERCLA, has been selected. Due to the nature of the topography, subsurface, and the groundwater, Ohio EPA has doubts as to the long-term effectiveness of Alternative 3.
- US EPA has decided to use community acceptance as the primary selection criterion for the remedy, out of the nine criteria required. This is not consistent with the National Contingency Plan (NCP).

*FILE (4 LIBELOUS)
CLEAN lead the organization of
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D. Schregardus, - Confidential -
May 28, 1993
Page 3

- The US EPA does not outline specifics for contingent aspects of the remedy, i.e., in-situ vapor extraction, movement of wastes, retaining wall and cap, long-term operation and maintenance (O & M). This is of special concern to Ohio EPA which could be left with the responsibility and cost of O & M if Skinner Landfill becomes a "fund-lead" site.
- The Ohio EPA has reservations as to whether deed restrictions can be successfully implemented at the site. This is due to the former, present, and future activities of the site owners who still reside at and conduct business at the site. Also, if the site becomes a "fund-lead" site, the Ohio EPA does not have the authority to impose deed restrictions.
- Despite the Ohio EPA's reservations, DERR and SWDO believe it will be in the State's best interest to concur with this ROD so that Ohio EPA can continue its input to the remedial activities at the Skinner Landfill site.

cc: Jan Carlson, Acting Chief, DERR
Tom Winston, District Chief, SWDO

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Skinner comment period winding down

By Lisa Loveless-Manz

Pulse-Journal Reporter

Anyone wanting to put in his or her two cents about the cleanup of the Skinner Landfill off Cincinnati-Dayton Road has just a few more days to do so.

The 30-day public comment period, which began June 9 after the Remedial Action Consent Decree was filed with the U.S. Department of Justice (DOJ), will end Sunday.

The decree is an agreement among the U.S. government, the site owners and 13 companies held primarily responsible for the cleanup of the 78-acre landfill, which was a dump for all types of wastes between 1934 and 1990. It requires the companies held responsible for the cleanup pay for and manage the hazardous waste cap over the landfill and ground water control and monitoring, and pay for EPA's cost in monitoring the cleanup.

Within the past few weeks, and up until Sunday, the public has been invited to comment on the more than 2,000-page consent decree by submitting written comments to the U.S. Dept. of Justice, c/o Assistant Attorney General, Environment and Natural Resources Division, Washington, D.C., 20530.

While it sounds simple, for some there have been problems.

Beth Hauer, West Chester resident and member of the environmental group CLEAN, said she had difficulty locating a copy of the decree to review.

She said phone calls requesting copies did not pro-

duce one and she was unable to locate the decree at any libraries or on the Internet.

When she received a copy courtesy of West Chester Township, she expressed concern over the manageability of the massive technical document for the average person.

She said she felt the decree was too general, and did not specifically indicate what the cleanup would include.

"The EPA has been screwing us around from day one, and they're not going to stop now," she said.

Susan Pastor said the EPA has made every effort to make the information available to the public. "We've made it as easy for people as we can."

Though she said a copy of the decree had been sent to the public library in West Chester, employees at the library Monday were not able to verify that the document was there.

Pastor also indicated the decree was accessible on the EPA's Web site, but it was not available Monday.

She later said the link had been accidentally removed and would be reestablished.

The site is www.epa.gov/region5/sites, then scroll down to Skinner Landfill.

As Pastor stated, a copy was sent to the township and is available for public perusal.

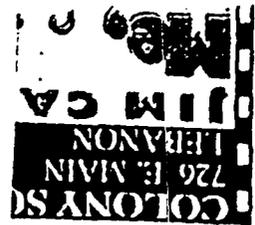
She said she did not anticipate the Department of Justice's final approval to take

very long. If the decree is approved in a timely fashion, cleanup could begin next spring. "I really don't think the decree will change (after the public comment period)," she said.

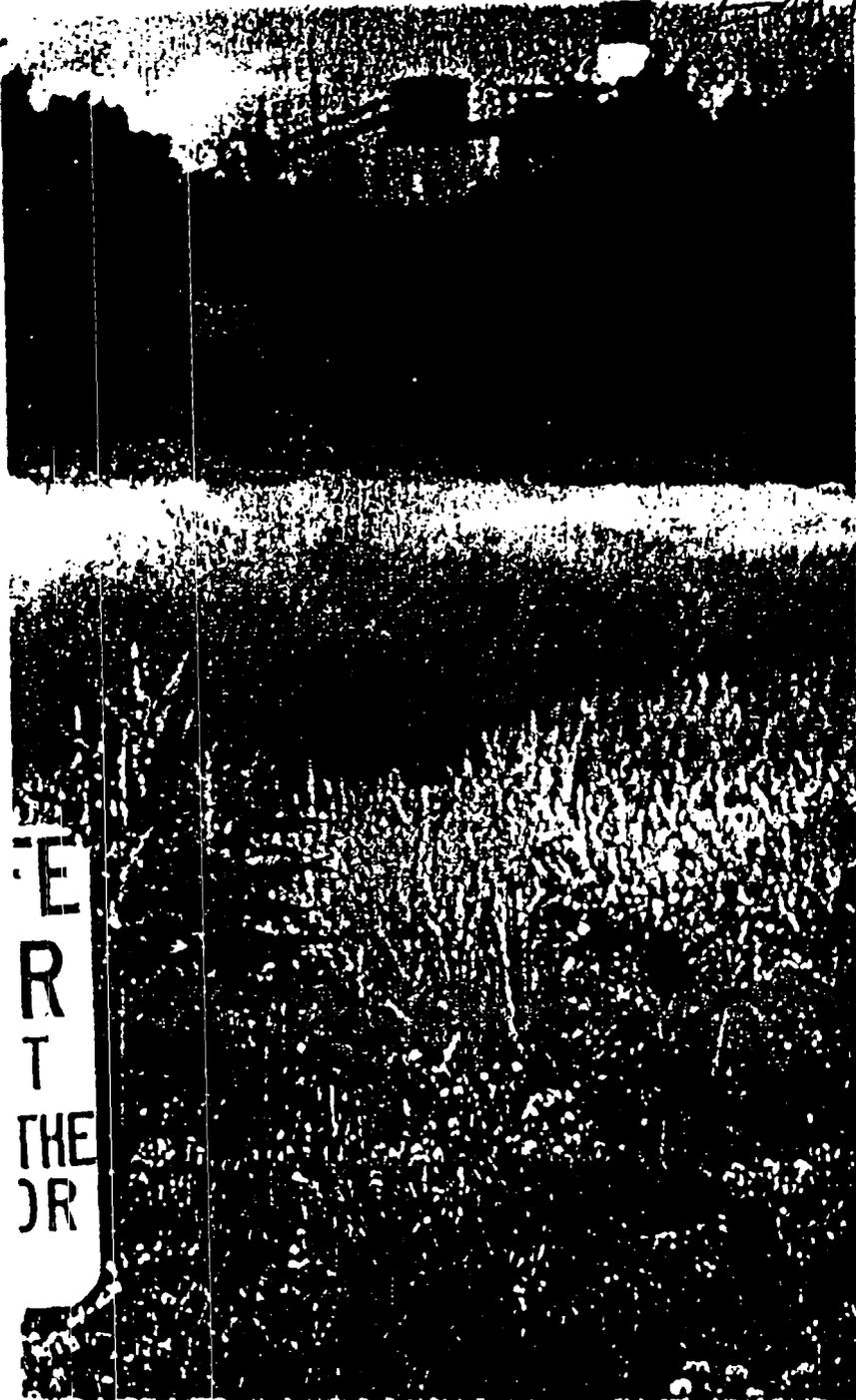
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(Continued from Page A1) knowing exactly what that

and the current church building was dedicated on Dec. 6, 1990.



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Beckett Paper Co. accused of violations

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luted areas, an end to any ongoing violations, and civil penalties.
The violations in question were reportedly noticed by U.S. and Ohio Environmental Protection Agency officials during routine inspections at the Middletown Works.
U.S. Department of Justice spokeswoman Cristine



Above, a photo of the original Beckett Mill. The paper with equipment cost \$12,000 in 1848.

Beckett Paper holds deep root in community

By Aaron London
Journal-News
HAMILTON

Long before Peter Thomson decided to build what would become Champion International's B Street paper mill on the west bank of the Great Miami River, the Beckett Paper Co. was becoming a world leader in papermaking. In fact, in many ways the establishment of the Beckett Paper Co. in 1848 thrust the company and the city of Hamilton squarely into the mainstream of the Industrial Revolution.

As the United States approached the middle of the 19th century, industrial activity began to pick up steam.

With the Great Miami running past the growing town, Hamilton attracted several industries lured by the availability of cheap power. One such prospective industrialist, Calvin Reilly, came to Hamilton with the idea of building a paper mill.

However, Reilly suffered a financial setback shortly after construction on the mill began, and the man he hired to design and build the facility, Adam Laurie, approached up-and-coming young lawyer William Beckett with the idea of going into the paper business.

Mill operations commenced in May 1848, with initial output of 2,000 pounds of newsprint per day. In two years, a second machine was added, ensuring strong revenue for the

output. With the advent of the Civil War in April 1862, circulation of the Gazette increased enormously, requiring nearly 75 percent of the mill's output.

While the price for finished paper was high, the cost of raw materials skyrocketed, forcing the mill to fulfill the contract at a loss.

While paper was being made at the mill, the operation would not formally become the Beckett Paper Co. until its incorporation under that name in 1868. Up to that time, the company's name reflected various partners William Beckett had in the business.

Through the remaining years of the 19th century and into the 20th, the mill would be subject to the economic conditions affecting the nation. But through each setback, such as the panic of 1873 and 1893 and even the Great Depression, the company found a way to survive. Passed from one generation of the Beckett family to the next, the company also survived the catastrophe of the 1937 flood and grew along with the city of Hamilton.

Into the 20th century, the company became one of the leading paper manufacturers in the country, established itself as an innovator not only in the making of paper, but in its marketing and selling the product.

Beckett Paper Co. would be one of the first paper companies to advertise in national trade publications and was a charter member of the Paper Market



in the distance Thursday, signs warning of the unsafe water con- along the ailing creeks shores south of the plant.

Pat Auckerman/For the Journal-News

AK accused of on violations

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luted areas, an end to any ongoing violations, and civil penalties.

The violations in question were reportedly noticed by U.S. and Ohio Environmental Protection Agency officials during routine inspections at the Middletown Works.

U.S. Department of Justice spokeswoman Cristine Romano said a federal lawsuit filed on Thursday charges AK with violating the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act, a hazardous waste law. The charges were filed on behalf of the U.S. EPA.

Jennifer Detwiler, spokeswoman for the Ohio Attorney General's Office, said the state will file a suit on behalf of the Ohio EPA, maybe as soon as today. She said the Ohio lawsuit will charge AK (Please see POLLUTION, Page A2)

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As the United States approached the middle of the 19th century, industrial activity began to pick up steam.

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However, Reilly suffered a financial setback shortly after construction on the mill began, and the man he hired to design and build the facility, Adam Laurie, approached up-and-coming young lawyer William Beckett with the idea of going into the paper business.

Mill operations commenced in May 1848, with initial output of 2,000 pounds of newsprint per day. In two years, a second machine was added, ensuring strong revenue for the next decade and a half.

But the mill was soon to suffer a setback because of its success.

Early in 1861, William Beckett won a fixed-price contract to supply newsprint to the Cincinnati Gazette, an amount equal to 25 percent of the mill's

various partners
Beckett had in the business.

Through the remaining years of the 19th century and into the 20th, the mill would be subject to the economic conditions affecting the nation. But through each setback, such as the panics of 1873 and 1893, and even the Great Depression, the company found a way to survive. Passing from one generation of the Beckett family to the next, the company also survived the catastrophe of the 1911 flood and grew along with the city of Hamilton.

Into the 20th century, the company became one of the leading paper manufacturers in the country, and established itself as an innovator not only in the making of paper, but in the marketing and selling of the product.

Beckett Paper Co. would be one of the first paper companies to advertise in national trade publications and was a charter member of the Paper Market Advertising Association when the organization was formed in 1911.

By the late 1950s, changes in the paper industry and the need to expand operations resulted in two important decisions for the company. (Please see MILL, Page

Director plays the 'Man' at MU

with it because he brings up good points regarding the benefits of a youth band. Swihart knows from experience that learning to play a musical instrument and playing with a group is a confidence booster, helping young people build a sense of camaraderie and teamwork.

Not to mention the way that parents react to hearing their children play in a band. While Harold Hill came to River City to hawk

instruments and uniforms, what he ended up selling them was joy.

In "The Music Man," Harold Hill gets wrapped up with the people in the town he's targeted and makes a special effort to win over Marion the librarian, his most vocal opponent, who ultimately doesn't seek justice for the con game that's been run on the town.

"Everything happens exactly as he

Ohio, where he played Tommy in "The Music Man," the Tin Man in "The Wizard of Oz," and Frank, the lead male role in "Annie Get Your Gun."

In this production, Swihart gets to lead members of his real bands as a bogus bandleader.

"It's been fun to get to work with them outside the classroom," he said.

"The Music Man," written by Meredith Willson, opens 8 p.m. today in the Gates-Ablegga Theatre in the Center for Performing Arts, just off Patterson Drive in Oxford. Additional performances will be 8 p.m. Saturday and July 5 to 8, with a 2 p.m. matinee Sunday.

Tickets are \$11 for adults, \$9 for students and senior citizens, and \$6 for children 12 and younger. For information, call 529-3200, from noon to 5 p.m. Tuesday through Friday.

Mary Lenning, visiting instructor of theater, is the director. Junior theater major Amanda Adams from Lewisburg, Ohio, plays Marion Paroo. The large



Funeral services are 10:30 a.m. Monday at Wilson-Schramm-Spaulding Funeral Home, Middletown. Visitation is from 5 p.m. Sunday at the funeral home.

Rdell Wallace

Rdell L. Wallace, 76, of Middletown, died Thursday, June 29, at Middletown Memorial Hospital. He is survived by her husband, Perry Wallace; sons, Jack, Perry and Ron Wallace; daughter, Carol Wallace. Funeral services are 10 a.m. Monday at Wilson-Schramm-Spaulding Funeral Home, Middletown. Visitation is 6 to 8 today at the funeral home.

Debra Winstead

Debra Mae (Pilgrim) Winstead, 65, of Cincinnati, formerly of Hamilton, died Tuesday, June 27, at her residence. She is survived by her sons, Daniel and Harold Winstead; daughter, Debra Harris. Funeral services are noon Monday at Thompson Hall & Sons Funeral Home, Silverdale. Visitation is 11 a.m. to noon Monday at the funeral home.

Ill

(Continued from Page A1) The first was the purchase of 100 acres of land adjacent to the mill to accommodate a major expansion. The second was the decision to join the Hammermill Paper Co. in 1953 to provide financial resources for expansion. The relationship with Hammermill would remain in effect until Hammermill was sold by International Paper in 1986. The association with International Paper, which continues today, has brought the mill to the beginning of the 21st century, poised to move forward.

has driven the water rates up. That's the message we're trying to get out."

In 1989, the city and county

inflammatory comments being made and have made several attempts to try to resolve this issue without success," he said.

Pollution

(Continued from Page A1) with similar air, water and waste violations under state law. Ohio officials will ask the federal court to combine the lawsuits. She said that, once the suits are filed, AK will probably have between 28 and 30 days to reply to the allegations. Options for the company include making plans for a settlement or disputing the charges in court.

The company was unaware of the lawsuit and had not seen it Thursday, AK Steel spokesman Alan McCoy said.

McCoy expressed surprise, however, that Ohio is supporting the lawsuit. He said AK Steel lawyers had been meeting Thursday with Ohio environmental regulators in Columbus to address the alleged pollution violations, and the state personnel did not mention the lawsuit.

"We find that, at the least, bad-faith negotiating," McCoy said.

Both agencies are seeking the maximum in penalties. Federal officials are asking the court to

impose civil penalties of up to \$25,000 for each day of violation before Jan. 31, 1997, and \$27,500 for each day since. Ohio will seek penalties of \$25,000 per day of clean air violations and \$10,000 per day of clean water and hazardous waste violations.

The federal complaint claims AK has violated these laws at various times since 1993. Detwiler said state records against AK also show violations since the early 1990s.

According to Detwiler, state officials would like AK to cooperate and remedy the charges quickly.

"We would allege the company is responsible for cleaning it up," she said. "They allowed the violations to occur."

Specifically, the federal suit claims AK has caused "numerous chemical spills" into Dicks Creek, at least two of which killed fish. One of these spills is alleged to have killed 12,700 fish in the creek. The suit also claims AK has exceeded permit limits for heavy metals, nitrogen ammonia and cyanide on

do — through rate increases." (Journal News staff writer Ryan Weber contributed to this report.)

numerous occasions. The Clean Air Act violation in the suit claims AK has not controlled emissions that can reduce visibility and lead to adverse health effects. The Resource Conservation and Recovery Act violation says AK has not properly handled and disposed of all necessary hazardous waste.

The federal lawsuit is part of an effort, known as the Mississippi River Initiative, to keep illegal pollutants out of the Mississippi River. Dicks Creek is a tributary of the Ohio River, which empties into the Mississippi near the borders of Illinois, Missouri and Kentucky.

Ohio EPA Director Christopher Jones said his organization stands firmly behind the 30-page lawsuit against AK.

"Ohio EPA investigators have gathered extensive evidence of AK's blatant disregard for environmental compliance," he said in a prepared statement. "This puts the company on notice (that) we won't tolerate it."

(The Associated Press contributed to this story.)

BRIEFS

Enrichment classes geared for children

OXFORD

The Kids in College, an enrichment program for children in grades kindergarten to grade 5, will be offered from 9 a.m. to noon July 10 to 14 at Miami University.

"Music for Young Minds" and "A Palette of Sound" will be available to children in grades K to 1.

"Nature Detectives" will be

available to grades 2 to 3; and "Build It" for grades 4 to 5.

The fee is \$75. For registration, call 529-1608.

Benefit auction slated Saturday

HAMILTON

A benefit auction will be held starting at 10 a.m. Saturday at Jones auto Recyclers, Ohio 4 behind Big Lots. A large variety of items will be available. The event will benefit the

American Cancer Society.

Retired teachers planning picnic

HAMILTON

The Butler County Retired Teachers Association will meet at noon July 12 at the Izaak Walton League, Beisinger Road. A picnic lunch, catered by the Third Street Deli, is planned. The cost is \$8.25. Reservations are required by July 7 by calling Mary Jo Meyer at 539-8700.

mill reinstalled in memory of ...



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr
Columbus, Ohio 43266-0149
(614) 644-3020
FAX (614) 644-2329

Exhibit 4

O: WMD
CC: AVERILL
RA RF

George V. Voinovich
Governor

Donald R. Schregardus
Director

PRE

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June 1, 1993

REGIO

Mr. Valdas V. Adamkus
Regional Administrator
United States Environmental Protection Agency
Region-V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

RECEIVED
JUN 10 1993

OFFICE OF SUPERFUND
ASSOCIATE DIVISION DIRECTOR

RE: Skinner Landfill - Record of Decision

Dear Mr. Adamkus:

The Ohio Environmental Protection Agency (Ohio EPA) has received and reviewed the May, 1993 final Record of Decision (ROD) for the selected remedy at the Skinner Landfill Superfund site in West Chester, Ohio.

The ROD for the final remedy is the second of two RODs for the Skinner Landfill site, the first of which addressed the Interim Remedial Action taken at the site. U.S. EPA has selected Remedial Alternative 3 with Soil Vapor Extraction for the on-site contamination. The selected alternative includes the following components:

- * consolidation and multi-layered capping of waste materials
- * collection and treatment of contaminated groundwater
- * soil vapor extraction of near surface soils surrounding lagoon wastes
- * diversion of up-gradient groundwater flow
- * deed restrictions
- * monitoring of groundwater and surface water

The estimated net present worth cost of the selected remedy is \$16,031,900. The estimated annual present worth of operation and maintenance costs are \$397,000 for a period of 40 years.

Ohio EPA concurs with the selected remedy with reservations. Our reservations are explained below.

- * The most toxic contaminants will remain on-site in the lagoon. The originally proposed remedy, which included incineration, would have destroyed these contaminants and therefore, eliminated any potential for future off-

§ H/E

Valdus V. Adamkus, Regional Director
Skinner, Record of Decision
Page Two

site migration of these materials. The change in remedy relates to the issue of long-term effectiveness and permanence. It appears that in this case Community Acceptance, a modifying criteria in the remedy selection process, has been more heavily weighted than any other criteria.

* The remedy relies heavily on institutional controls to limit future use of all areas of the site where remedial construction has occurred. Ohio EPA has some concern about the effectiveness of this part of the remedy given our ability to enforce such controls. Ohio recognizes that the ROD provides that if institutional controls cannot effectively be implemented a re-evaluation of the remedy will occur.

* Ohio EPA is concerned about the future operation and maintenance costs associated with the selected remedy. At this time it is anticipated that potentially responsible parties (PRPs) will participate in the design and implementation of the remedy. Because of this the agency is willing to concur, however, this situation is subject to change and could affect Ohio EPA's financial obligation at the site.

While Ohio EPA believes that the original proposed alternative would have provided a more effective remedy for the long term, after giving consideration to community concerns, we concur with the selected remedy with the reservations that are explained above.

Sincerely,



Donald R. Schregardus, Director
Ohio Environmental Protection Agency

DRS/mms/cas

Distribution:

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Jim Van der Kloot, U.S. EPA
Joe Dufficy, U.S. EPA

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Exhibit 5

DECLARATION FOR THE RECORD OF DECISION

SITE NAME AND LOCATION

Skinner Landfill
West Chester, Butler County, Union Township, Ohio

STATEMENT OF BASIS AND PURPOSE

This decision document presents the selected final remedial action for the Skinner Landfill site in West Chester, Ohio, which was chosen in accordance with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) and to the extent practicable, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This decision document explains the factual and legal basis for selecting the final remedy for this site. The information supporting this final remedial action decision is contained in the administrative record for this site.

The State of Ohio concurs with the selected remedy.

ASSESSMENT OF THE SITE

Actual or threatened releases of hazardous substances from this site, if not addressed by implementing the response action selected in this ROD, may present an imminent and substantial endangerment to public health, welfare, or the environment.

DESCRIPTION OF THE SELECTED REMEDY

This remedy is the second and final of two operable units for this site. The first operable unit addressed immediate site concerns, through the construction of a fence around the contaminated area, and by offering an alternate supply of drinking water to the potentially affected users of groundwater. This final operable unit addresses potential future migration of site contaminants into the groundwater and will limit the potential for direct exposure of site contaminants to humans through source control measures.

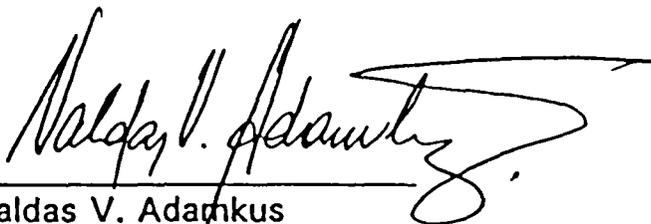
The selected remedy includes the following:

- construction of a RCRA cap over the waste materials;
- interception, collection, and treatment of contaminated groundwater;
- diversion of upgradient groundwater flow;
- monitoring;
- institutional controls; and
- soil vapor extraction.

DECLARATION

The selected remedy is protective of human health and the environment, complies with Federal and State requirements that are legally applicable or relevant and appropriate to the remedial action, and is cost-effective. This remedy utilized permanent solutions and alternative treatment (or resource recovery) technologies to the maximum extent practicable.

Because this remedy will result in hazardous substances remaining on site above health-based levels, a review will be conducted within five years after the commencement of the remedial action to ensure that the remedy continues to provide adequate protection of human health and the environment.



Valdas V. Adamkus
Regional Administrator
U.S. EPA, Region V

6/04/93.

Date